SUPREME COURT OF THE UNITED STATES.

No. 255.

THE WESTERN UNION TELEGRAPH COMPANY, COMPLAINANT, APPELLANT,

vs.

THE UNITED STATES TELEGRAPH COMPANY, AND THE CINCINNATI, HAMILTON, AND DAYTON RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 At a circuit court of the United States within and for the seventh circuit and southern district of Ohio, begun and held on the first Tuesday, being the fourth day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the ninetieth. Present, the Honorable Humphrey H. Leavitt, one of the judges of said court, the following proceedings were had:

THE WESTERN UNION TELEGRAPH COMPANY, a corporation created by the State of New York, and a citizen of that State, complainants, *vs.* THE UNITED STATES TELEGRAPH COMPANY of Ohio, and the Cincinnati, Hamilton & Dayton Railroad Companies, are corporations created by the State of Ohio, & citizens thereof, defendant.	Chancery.

Be it remembered, that heretofore, to wit, on the twelfth day of May, in the year of our Lord, one thousand eight hundred sixty-five, came the complainant herein, and filed its certain bill in chancery in this cause against the defendants, which is in the words and figures following, to wit:

Bill.

To the honorable the judges of the circuit court of the United States for the seventh circuit and southern district of Ohio:

The Western Union Telegraph Company, a corporation created by the State of New York, and a citizen of that State, having its principal office in the same State, plaintiff, brings this bill against
2 The United States Telegraph Company, of Ohio, and the Cincinnati, Hamilton and Dayton Railroad Company, both of which companies are corporations created by the State of Ohio, and citizens thereof, each having its principal office at Cincinnati, in the said southern district, defendant. The plaintiff states:

1. That it was first incorporated and organized under and in pursuance of an act of the legislature of the State of New York, entitled "An act to provide for the incorporation and regulation of telegraph companies," passed April 12, 1848, by the name and style of "The New York and Mississippi Valley Printing Telegraph Company," and as such corporation was empowered to construct and operate a line of telegraph from the city of Buffalo, in said State of New York, to the city of St. Louis, in the State of Missouri, passing through the intermediate States, by the way of Cleveland, Columbus, and Cincinnati, in the State of Ohio.

2. That afterwards, by an act of the legislature of said State of New York, passed on the 4th of April, 1856. the corporate name of the plaintiff was changed to that of the Western Union Telegraph Company, under which said last mentioned corporate name the plaintiff has continually since been known, and carried on its business.

3. That in the prosecution of its lawful and authorized business, the plaintiff, by an arrangement with the said Cincinnati, Hamilton and Dayton Railroad Company, erected and put in operating order a line of telegraph extending from Dayton, Ohio, to Cincinnati, Ohio, as part of the line between Buffalo and St. Louis, so comtemplated by the charter of the plaintiff, along and upon the roadway of said railroad, and within the limits of the right of way belonging to said company.

4. That being so in possession and use of said line, the plaintiff, and the said railroad company, entered into a contract on the 30th of November, A. D. 1857, of which the following is a true copy:

An agreement made and entered into this 30th day of November, 1857, between the Western Union Telegraph Company, of the first part, and the Cincinnati, Hamilton and Dayton Railroad Company, of the second part.

Witnesseth: First. The telegraph company is to deliver to the party of the second part, the wire recently strung upon its poles along the road of the party of the second part, and furnish five sets of instruments for the same, and set them up at such points as said railroad company may designate, the said line to be worked by the party of the second part, for doing its railroad business. The telegraph company to furnish the necessary main-battery for said line at Cincinnati. The said wire to be connected with the main offices of the said telegraph company at Cincinnati, Hamilton, and Dayton, and the telegraph company to be entitled to the receipts for all paid business at said offices. At all other points where the railroad company choose to unite with the offices of the telegraph company, the railroad company shall yield the receipts in consideration of the telegraph company paying one-half of the ordinary expenses of said office.

Second. The telegraph company to pass free of charge the telegrah business of the railroad company between Cincinnati and Cleveland, and all intermediate points where it shall have offices,
4 and to have the right to add other wires to the poles of said line from Dayton to Cincinnati, or any part thereof, if found necessary for the use of the telegraph company.

Third. In case the railroad wire is broken or otherwise obstructed, the telegraph company to pass the business of the railroad company free of charge over any parallel wire it has or may have, and the telegraph company to have the right to send business over the said railroad wire, but not to interfere with the railroad business.

Fourth. The party of the second part agrees to execute and to deliver to the party of the first part, on or before the first day of July next, its promissory note for eighteen hundred dollars, ($1,800,) payable six months from date thereof, with interest; and also agrees to

keep the telegraph poles and wires along said road from Cincinnati to Dayton in good repair, including the renewal of poles when necessary, (the telegraph company, however, to furnish the wire and insulators used in repairing the wires of the telegraph company, or pay to the railroad company the cost of the same, and to pass free of charge the officers of said telegraph company that may ride over said road on telegraph business, and also to pass free of charge the employees of said telegraph company that may ride over said road on the business of the lines along that road.

In witness whereof, the president and secretary of the said Western Union Telegraph Company, party of the first part, and on behalf thereof, have hereunto subscribed their names, and caused the corporate seal of said telegraph company to be hereto affixed, and the president of the Cincinnati, Hamilton, and Dayton Railroad Company, party of the second part, and on behalf thereof, has hereunto subscribed, and caused the corporate seal of the railroad company to be hereto affixed.

CINCINNATI, HAMILTON & DAYTON R. R. CO.,
[L. S.] By S. S. L'HOMMEDIEU, *President.*
HIRAM SEBLEY,
President of the Western Union Telegraph Company.
[L. S.] ISAAC R. ELWOOD,
Secretary of the Western Union Telegraph Company.

5. That the plaintiff well and truly kept and performed all the covenants and stipulations to be kept and performed on its part under said last-mentioned contract and was in the lawful use of all the privileges secured thereby at the date of the contract next hereinafter set forth.

6. That on the 29th day of August, A. D. 1864, the plaintiff, as party of the second part, entered into a contract of that date, with the said Cincinnati, Hamilton and Dayton Railroad Company, as party of the first part, and the Atlantic and Great Western Railroad Company as party of the third part, a true copy of which, said last-mentioned contract, is as follows:

Agreement made this 29th day of August, in the year 1864, between the Cincinnati, Hamilton, and Dayton Railroad Company of the first part, the Western Union Telegraph Company, of the second part, and the Atlantic and Great Western Railroad Company, of the third part, witnesseth:

Whereas the said Atlantic and Great Western Railway Companies have erected a line of telegraph along the line of their railway from Salamanca, New York, to Dayton, Ohio, and in view of the business connections which will soon be in operation between the two railway companies, the said Atlantic and Great Western Railway Companies are desirous of extending their telegraph line to Cincinnati, or of making an arrangement or contract with some other line of telegraph to insure a complete and extended line to Cincinnati, to be used for the mutual benefit of the said parties of the first and third parts, and for the condition hereinafter men-

tioned, the party of the first part, does hereby grant to the party of the second part, the exclusive right to erect a line of telegraph of one or more wires along the right of way of the party of the first part, from Dayton to Cincinnati, for, and during the term of twenty years from the date of this agreement, subject to the following terms and conditions, to wit:

First. The said Western Union Telegraph Company, party of the second part, shall, within six months from the date of this contract, place upon their present row of poles, along the Cincinnati, Hamilton and Dayton Railroad, from Dayton to Cincinnati, or upon the new poles to be placed upon the opposite side of said Cincinnati, Hamilton and Dayton railroad, a wire to be used by the Atlantic and Great Western Company for its railway business.

Second. The said party of the second part, further agrees to furnish connection with its main battery at Cincinnati, for working said wire without charge to the railroad company; and also, during the continuance of this contract, to transmit all messages of the presidents, vice-presidents and general superintendents of the Cincinnati, Hamilton and Dayton, and of the Atlantic and Great Western Railroad Companies, pertaining strictly to the business of their respective roads and their ordinary family communications, free of charge over all its lines of telegraph now owned, or that may be hereafter owned or controlled by the Western Union Telegraph Company.

Third. The party of the second part agrees, in the construction of the line of telegraph on the opposite side of said Cincinnati, Hamilton and Dayton railroad, to set the poles on or near the outer
7 line of the right of way of the party of the first part, and under the direction of the superintendent of the party of the first part.

Fourth. It is also agreed by the party of the first part, that it will grant free passage of such men and materials as may be necessary for the construction and repairs of said telegraph lines; and further agrees that it will not transport men or materials for any competing telegraph line or lines at less than the usual local rates of freight, nor stop its trains for such parties or associations at other than regular stations. It is also understood and agreed by the parties hereto, that the party of the first part may open such telegraph offices in its stations as they may desire for the operation of its road, and such mutual arrangement for the payment of the telegraph operators may be made as may be hereafter mutually agreed upon.

Fifth. The party of the second part hereby guarantees to the party of the third part, the right to the Morse patent, or any renewal thereof for railway purposes, along the line of its railway and branches within the territory owned by the Western Union Telegraph Company.

Sixth. For the consideration before mentioned, the party of the third part hereby agrees to pay to the party of the second part, within two years from the date of this contract, the cost of the wire and putting up of the same at the time of its erection, with interest.

Seventh. On all local paid messsges that may be taken at points

on the Atlantic and Great Western Railway Company's line where the Western Union Telegraph Company has no office, and destined to Cincinnati, the said Atlantic and Great Western Railway Company hereby agrees to pay the Western Union Company its pro rata proportion of the tariff to Cincinnati.

Eighth. In case the Western Union Telegraph Company shall at any time within the period specified for the duration or con-
8 tinuance of this contract, sell, transfer, convey, or assign all or any part of its right of franchise, so far as the same shall in any degree effect the consideration mentioned in this agreement, or shall in any manner pass the control of all or any part of its line over to other parties, such sale, or transfer, or assignment shall expressly reserve all the legal and equitable rights of the first party and third party to this agreement, according to the intent and meaning thereof; and, failing so to do, the party of the first part shall have the right to declare this agreement forfeited and at an end, and the Western Union Telegraph Company, or its assigns, shall forfeit all its rights under the same.

Ninth. It is hereby mutually agreed, that three copies of this contract shall be executed, one to be retained by each party to this agreement.

In witness whereof, the parties to these presents have caused the corporate seals of their respective companies to be affixed hereto, and to be subscribed by their president and secretary the day and year first above written.

THE CINCINNATI, HAMILTON AND DAYTON R. R. CO.
S. S. L'HOMMEDIEU, *Pres't.*
B. D. STEVENSON, *Sec., pro tem.*
WESTERN UNION TELEGRAPH CO.
HIRAM SIBLEY, *Pres't.*
O. H. PALMER, *Sec'y.*
THE ATLANTIC & GREAT WESTERN R. R. CO.
WM. REYNOLDS, *Pres't.*
J. M. DICKS, *Act'g Sec'y.*

7. That by the terms of the contract there was granted to the plaintiff by the said Cincinnati, Hamilton, and Dayton Railroad Company, the right to erect and maintain, for the term of 20 years from the date thereof, another line of telegraph of one or more wires along the right of way of said last-mentioned company, from Dayton to Cincinnati, which additional line was to be placed, and the poles thereof to be set on or near the outermost line of the said right of way, being the west side, and opposite to that occupied by
9 the then existing line of telegraph, hereinbefore mentioned, and to be so set and located under the direction of the superintendent of said last-mentioned railroad company, which right, so granted, was exclusive over the whole length and breadth of said roadway for all purposes of telegraph business except those of the plaintiff and those secured by said contract.

8. That the plaintiff, from the date of the last-mentioned contract,

has well and truly kept and performed all the stipulations and covenants in the same contained, on its part to be kept and performed, and did, within six months from the date thereof, place upon its then existing row of poles along said railroad from Dayton to Cincinnati, a wire for the use of the said Atlantic and Great Western Railway Company, for its railway business, and hath ever since maintained the same; and the plaintiff did thenceforth furnish, and hath continually since furnished connection with the main battery of plaintiff, at Cincinnati, for working said wire without charge to the railroad company, contemplated by said contract, and hath continually hitherto transmitted all messages of the presidents, vice-presidents, and general superintendents of both said railroad companies, pertaining to the business of their several roads, and their ordinary family communications, free of charge, over all the lines of telegraph owned or controlled by the plaintiff, and hath performed, and is ready to perform, the stipulations in said contract touching the right to use the Morse patent.

9. That the plaintiff hath not in any manner, or at any time since the date of said last-mentioned contract, sold or transferred any part of its right of franchise in violation of said last-mentioned contract, or in any manner surrendered the control of any part of its line, over to other parties, or in any manner or degree interfered with or disregarded the legal or equitable rights of said two railroad companies, or either of them; and at the time of the *time of the* committing of the grievances against the plaintiff by the said United States Telegraph Company, of Ohio, the plaintiff was in the full and undisturbed possession and enjoyment of all the rights secured to the plaintiff under said contract.

10. That about the the plaintiff, in exercise of the right so secured by said last-mentioned contract, commenced the erection of a line of telegraph on the said west side of said right of road-way of said Cincinnati, Hamilton, and Dayton Railroad Company, from Dayton to Cincinnati, by a route or line near the outer side thereof, under the direction of the superintendent of the said last-mentioned company; and was proceeding without objection from the last-mentioned company, and with the approval of its superintendent to the construction of said new line, and had caused to be dug excavations or holes along nearly the whole length of line from Dayton to Cincinnati, and was making preparations for the finishing of the line, so that the same should be put in working order with all reasonable despatch.

11. That, whilst this work was in progress, the said defendant, the United States Telegraph Company, of Ohio, made application to the said Cincinnati, Hamilton, and Dayton Railroad Company to acquire, by contract from said railroad company, the right to construct and maintain a line of telegraph along its roadway, and within the line of its right of way from Cincinnati to Dayton; but, not succeeding in such application, the said U. S. Telegraph Company, of Ohio, did, on the 5th of April, 1865, institute proceedings, by petition and statement in the probate court of Hamilton county, Ohio, against the said last-mentioned railroad com-

pany, as sole defendant for the appropriation and condemnation, as is alleged, of property of the Cincinnati, Hamilton and Dayton Railroad Company for the erection of a line of magnetic telegraph, being so much of the land held and used by said railroad company for the right of way of its railroad from the depot in the city of Cincinnati to the depot in the city of Dayton, and of such right of way, and on the west side of said right of way as may be required for the erection and maintenance of telegraph poles, wires, and other necessary fixtures, and also the right of way over said land and right of way of said railroad company, sufficient to enable said magnetic telegraph company to construct and repair said line of magnetic telegraph.

12. That the plaintiff, being informed that such a proceeding was instituted, applied, by petition, to said probate judge for leave to be made a party thereto, and to intervene in said case, in order to protect its interest and rights, exhibiting with said petition true copies of the said two contracts, and supporting said petition by affidavit; that the said application so made by plaintiff was resisted by the said United States Telegraph Company of Ohio, and overruled by said probate judge; that the right and claims of the plaintiff under said two contracts were not brought forward or disclosed in said proceedings by the said Cincinnati, Hamilton, and Dayton Railroad Company; but, on the contrary, the said railroad company voluntarily appeared in said proceedings before the probate judge, and waived notice to the clerk and sheriff of said Hamilton county, of the filing of said statement, and also waived a jury to assess the
12 damages, and agreed to submit the assessment of damages to the probate judge, which mode of assessment was also agreed to by said U. S. Telegraph Company.

13. That thereupon, on the 11th day of April, 1865, the said case in the probate court came on for hearing, and it is recited in the final order made that the said railroad company offering to prove the damages would amount to one thousand dollars, and the said U. S. Telegraph Company of Ohio, asserting that the witnesses would prove damages to that amount, the said court, by consent of said two parties, did find the damages to be paid by the U. S. Telegraph Company to said railroad company, in respect to the lands appropriated by said U. S. Telegraph Company, amounts to one thousand dollars; and did order that said U. S. Telegraph Company, on payment of said sum, were entitled to hold the lands in the statement mentioned, for the purpose of erecting lines of magnetic telegraph, as in the statement mentioned—all which will more fully and at large appear by a duly certified transcript of the proceedings in said probate court hereunto annexed and made part of this bill.

14. That the plaintiff had well hoped that the said U. S. Telegraph Company, being so advised, as aforesaid, of the exclusive right so acquired by the plaintiff, would have sought to acquire a right to establish a line of telegraph, as proposed, by purchase or contract with the plaintiff, or, in case of failure, to effect such purchase or contract by proceeding against the plaintiff under the law for appro-

priating and condemning such right; but so it is that the said U. S. Telegraph Company, wholly denying that the plaintiff has any right or interest in the premises, has commenced, since the making of said order by the probate court, the construction of a line of telegraph within the said right of way by said railroad company, and near the west side thereof, with the avowed purpose of constructing
13 said line from the depot, at Cincinnati, to the depot at Dayton, and has commenced to dig excavations for the erection of poles to sustain the wire along and upon the same line marked out and designated by the excavations and other works of the plaintiff, on the west side aforesaid, for the most part in exact coincidence, and in part in such close proximity as materially to interfere with the use of the line so begun and fully marked out and designated by the plaintiff.

15. That said U. S. Telegraph Company was fully advised before it commenced the construction of its said line, and through its agents and servants has been repeatedly notified since, that in the construction of its said line it was occupying the very line so begun and designated by the plaintiff; but has, nevertheless, utterly disregarded the exclusive right of the plaintiff over the whole length and breadth of said railroad right of way, but as well over and along the said defined line so marked out and designated for a new line by the plaintiff, and in proceeding to complete its said line, with the intention of maintaining the same permanently, in defiance of all the rights of the plaintiff, to the great injury of the plaintiff, and the destruction of the rights and vested estate of the plaintiff, as aforesaid.

16. In consideration whereof, and to the end that the defendant may fully answer and several the allegations of this bill, the plaintiff prays process of subpœna against the said The Cincinnati, Hamilton and Dayton Railroad Company, and the said The United States Telegraph Company of Ohio, named as defendants in the introductory clause of this bill.

17. And the plaintiff prays that a provisional injunction be issued to compel the said The United States Telegraph Company, of Ohio, from proceeding further in the construction or use of said line of telegraph, to continue until the final hearing, and that at such
14 final hearing the said injunction be made perpetual, and the said United States Telegraph Company, of Ohio, be decreed and perpetually enjoined from the erection or operation of the line of telegraph within or upon the said right of way of the last mentioned railroad company, and that an account be taken of the profits of said United States Telegraph Company from the use of said line, and that the said line be abated and removed, and to grant the plaintiff such further relief as the case may require and to equity may belong.

HENRY STANBERY and
E. ALEX. FERGUSON,
Sol'rs for Pl't'ff.

Pleas at the court-house in Cincinnati, in the county of Hamilton, and State of Ohio, of the Hamilton county probate court, at a session thereof held at the place aforesaid, on the 11th day of April, in the year of our Lord one thousand eight hundred and sixty-five, before the Honorable Edward Woodruff, sole judge of said court.

Petition for condemnation.

Ham. probate court.

THE UNITED STATES TELEGRAPH COMPANY, of Ohio,
vs.
THE CINCINNATI, HAMILTON, AND DAYTON Railroad Company.

STATE OF OHIO, *Hamilton county, ss:*

Be it remembered, that heretofore, to wit, on the 5th day of April, in the year of our Lord one thousand eight hundred and sixty-five, the plaintiffs in the foregoing entitled cause, by W. Y. Gholson, their attorney, filed their petition in said cause, clothed in the words and figures following, to wit:

Petition.

Probate court of Hamilton county.

THE UNITED STATES TELEGRAPH COMPANY, of Ohio,
vs.
THE CINCINNATI, HAMILTON, AND DAYTON Railroad Company.

Statement.

STATE OF OHIO:

The United States Telegraph Company, of Ohio, a corporation under the laws of Ohio, wishing to make an appropriation of property of the Cincinnati, Hamilton and Dayton Railroad Company, for the erection of a line of magnetic telegraph, and being unable to agree with the said railroad company upon the compensation to be paid therefor, states that the property and rights sought to be appropriated are so much of the land held and used by the said railroad company, for the right of way of its railroad from the depot, in the city of Cincinnati, to the depot in the city of Dayton, and of such right of way, and on the west side of said right of way, as may be required for the erection and maintenance of telegraph poles, wires, and other necessary fixtures; and also the right of way over said land and right of way of the said railroad company sufficient to enable said magnetic telegraph company to construct and repair said line of magnetic telegraph.

JOHN KIRK,
President of the United States Telegraph Co., of Ohio.

[50-ct. U. S. rev. stamp.]

The Cincinnati, Hamilton and Dayton Railroad Company appears in this proceeding, and waives the necessity of notifying the clerk of the court of common pleas and sheriff of Hamilton county of the filing of the statement, and waives a jury to assess damages, and agrees to attend at the office of the judge on Thursday the sixth day of April, 1865, for the purpose of the assessment of damages by the said judge, which mode of assessment is also agreed to by the said United States Telegraph Company.

THE CINCINNATI, HAMILTON, &
DAYTON RAILROAD COMPANY,
By S. & S. R. MATTHEWS, *Attorneys.*

AP'L *5th*, 1865.

And whereas, afterwards, on the 11th day of April, A. D. 1865, petition of the Western Union Telegraph Company was filed herein, clothed in the words and figures following, to wit:

Petition of the Western Union Telegraph Co.

THE UNITED STATES TELEGRAPH COMPANY, of Ohio,
vs.
THE CINCINNATI, HAMILTON, AND DAYTON Railroad Company,

16 In probate court, Hamilton county, Ohio.

Proceedings to appropriate right of way for a line of telegraph along and upon the road-way of said defendant. Statement filed in probate court of Hamilton county, April 5th, 1865.

To the hon'ble the judge of said probate court:

Your petitioner, the Western Union Telegraph Company, associated for the purpose of carrying on the business of telegraphing in the State of Ohio, and having its principal office in said county, states that your petitioner claims to have the exclusive right of maintaining and operating a telegraph line or lines along and over the road-way, or right of way, of said railroad company, from Cincinnati to Dayton, in virtue of the two contracts, true copies of which, marked A & B, are herewith attached, and made part of this petition.

That your petitioner has fully performed the covenants and agreements in said two contracts contained, on the part of your petitioner to be performed, and is now in full and undisturbed possession of the rights acquired by said contracts, and is engaged in constructing a line on the west side of the said railroad right of way, and has caused holes to be dug for the posts along the entire route from Cincinnati to Dayton. That said plaintiff seeks to appropriate and condemn a right of way and a line of telegraph along the same west side of said road-way, against the exclusive right of your petitioners.

Your petitioners, therefore, pray for leave to become parties de-

fendant in said proceedings, and for leave to intervene in said case to protect the rights and interests of your petitioners.

THE WESTERN UNION TELEGRAPH COMPANY,
By FERGUSON & STANBERY, *their Attorneys.*

THE STATE OF OHIO, *Hamilton county, sct:*

Frank A. Armstrong being duly sworn, says that the facts stated and allegations in the foregoing petition is true, as he verily
17 believes.

FRANK A. ARMSTRONG.

Sworn to and subscribed before me this 10th day of April, A. D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public, Ham. Co.

A.

An agreement made and entered into this 30th day of November, 1857, between the Western Union Telegraph Company, of the first part, and the Cincinnati, Hamilton and Dayton Railroad Company, of the second part, witnesseth:

First. The telegraph company is to deliver to the party of the second part, the wire recently strung upon its poles along the road of the road of the party of the second part, and furnish five sets of instruments for the same, and set them up at such points as said railroad company may designate, the said line to be worked by the party of the second part, for doing its railroad business. The telegraph company to furnish the necessary main battery for said line at Cincinnati. The said wire to be connected with the main offices of the telegraph company at Cincinnati, Hamilton and Dayton, and the telegraph company to be entitled to the receipts for all paid business at said offices. At all other points where the railroad company choose to unite with the offices of the telegraph company, the railroad company shall yield the receipts, in consideration of the telegraph company paying one half the ordinary expenses of said office.

Second. The telegraph company to pass free of charge the telegraph business of the railroad company between Cincinnati and Cleveland, and all intermediate points where it shall have offices, and to have the right to add other wires to the poles of said line from Dayton to Cincinnati, or any part thereof, if found necessary for the use of the telegraph company.

Third. In case the railroad wire is broken or otherwise obstructed, the telegraph company to pass the business of the
18 railroad company, free of charge, over any parallel wire it has or may have, and the telegraph company to have the right to send business over the said railroad wire, but not to interfere with the railroad business.

Fourth. The party of the second part agree to execute and deliver to the party of the first part, on or before first day of July next, its

promissory note for eighteen hundred dollars, ($1,800), payable six months from date thereof, with interest; and also agrees to keep the telegraph poles and wires along said road, from Cincinnati to Dayton, in good repair, including the renewal of poles when necessary, (the telegraph company, however, to furnish wire and insulators used in repairing the wires of the telegraph company, or to pay the railroad company the cost of the same,) and pass free of charge the officers of said telegraph company that may ride over said road on telegraph business, and also pass free of charge the employees of said telegraph company that may ride over said road on the business of the lines along that road.

In witness whereof, the president and secretary of the said Western Union Telegraph Company, party of the first part, and on behalf thereof, have hereunto subscribed their name, and caused the corporate seal of said telegraph company to be hereto affixed; and the president of the Cincinnati, Hamilton and Dayton Railroad Company, party af the second part, and on behalf thereof, has hereunto subscribed, and caused the corporate seal of the railroad company to be hereunto affixed.

CINCINNATI, HAMILTON, AND DAYTON R. R. CO.,
By S. S. L'HOMMEDIEU, *President.* [L. S.]
HIRAM SIBLEY,
President of the Western Union Telegraph Co.
ISAAC R. ELWOOD,
Secretary of the Western Union Telegraph Co. [L. S.]

B.

Agreement made this 29th day of August, in the year 1864,
19 between the Cincinnati, Hamilton and Dayton Railroad Company, of the first part, the Western Union Telegraph Company, of the second part, and the Atlantic and Great Western Railroad, of the third part, witnesseth:

Whereas, the said Atlantic and Great Western Railway Companies have erected a line of telegraph along the line of their railway from Salamanca, New York, to Dayton, Ohio, and in view of the business connections which will soon be in operation between the two railway companies, the said Atlantic & Great Western Railway Companies are desirous of extending their telegraph line to Cincinnati, or of making an arrangement or contract with some other line of telegraph, to insure a complete and extended line to Cincinnati, to be used for the mutual benefit of the said parties of the first and third parts; and for the consideration hereinafter mentioned, the party of the first part does hereby grant to the party of the second part the exclusive right to erect a line of telegraph, of one or more wires, along the right of way of the party of the first part, from Dayton to Cincinnati, for and during the term of twenty years from the date of this agreement, subject to the following terms and conditions, to wit:

First. The said Western Union Telegraph Company, party of the second part, shall, within six months from the date of this contract, place upon their present row of poles along the Cincinnati, Hamilton and Dayton railroad, from Dayton to Cincinnati, or upon the new poles to be placed on the opposite side of said Cincinnati, Hamilton Dayton railroad, a wire to be used by the Atlantic and Great Western Railway Company for its railway business.

Second. The said party of the second part further agrees to
20 furnish connection with its main battery, at Cincinnati, for working said wire without charge to the railroad company; and also, during the continuance of this contract, to transmit all messages of the presidents, vice presidents, and general superintendents of the Cincinnati, Hamilton and Dayton, and of the Atlantic and Great Western Railroad Companies, pertaining strictly to the business of their respective roads and their ordinary family communications, free of charge, over all its lines of telegraph, now owned, or that may be hereafter owned or controlled by the Western Union Telegraph Company.

Third. The party of the second part agrees in the construction of the line of telegraph on the opposite side of said Cincinnati, Hamilton and Dayton railroad to set the poles on or near the outer lines of the right of way of the party of the first part, and under the direction of the superintendent of the party of the first part.

Fourth. It is also agreed by the party of the first part, that it will grant free passage of such men and materials as may be necessary for the construction and repairs of said telegraph line or lines, and further agrees that it will not transport men or material for any competing telegraph line or lines at less than the usual local rates of freight, nor stop its trains for such parties or associations at other than regular stations. It is also understood and agreed by the parties hereto, that the party of the first part may open such telegraph offices in its stations, as they may desire for the operation of its road, and such mutual arrangement for the payment of the telegraph operators may be made as shall hereafter be mutually agreed upon.

Fifth. The party of the second part, hereby guarantees to
21 the party of the third part, the right to the Morse patent, or any renewal thereof for railway purposes along the line of its railway and branches, and within the territory owned by the Western Union Telegraph Company.

Sixth. For the consideration herein before mentioned, the party of the third part, hereby agrees to pay the party of the second part, within two years from the date of this contract, the cost of the wire and putting up of the same, at the time of its erection, with interest.

Seventh. On all local paid messages, that may be taken at points on the Atlantic and Great Western Railway Company's line, where the Western Union Telegraph Company has no office, and destined to Cincinnati, the said Atlantic and Great Western Railroad Company hereby agrees to pay the Western Union Company its pro rata proportion of the tariff to Cincinnati.

Eighth. In case the Western Union Telegraph Company shall, at any time within the period specified for the duration or continuance of this contract, sell, transfer, convey, or assign, all or any part of its right of franchise, so far as the same shall in any degree effect the consideration mentioned in this agreement, or shall in any manner pass the control of all or any part of its line over to other parties, such sale, or tranfer, or assignment shall expressly reserve all the legal and equitable rights of the first party and third party to this agreement, according to the intent and meaning thereof, and failing so to do, the party of the first part shall have the right to declare this agreement forfeited and at an end; and the Western Union Telegraph Company or its assigns shall forfeit all its rights under the same.

Ninth. It is hereby mutually agreed that three copies of this contract shall be executed, one to be retained by each party to this agreement.

In witness whereof, the parties to these presents have
22 caused the corporate seals of their respective companies to be affixed hereto, and to be subscribed by their president and secretary, the day and year first above written.

THE CINCINNATI, HAMILTON & DAYTON R. R. Co.
S. S. L'HOMMEDIEU, *Pres't.*
B. D. STEVENSON, *Sec. Pro. Tem.*
WESTERN UNION TELEGRPH CO.
HIRAM SIBLEY, *Pres't.*
O. H. PALMER, *Sec'y.*
THE ATLANTIC & GREAT WESTERN R. R. CO.
WM. REYNOLDS, *Pres't.*
J. M. DICK, *Act'g Sec'y.*

Now here at the session of our said probate court, first aforesaid, on the 11th day of April, Anno Domini 1865, said court made an order herein as follows, to wit:

Order.

This cause came on for hearing, and thereupon came the Western Union Telegraph Company, and filed a petition to be admitted a party defendant for reasons set forth in said petition and the exhibits therewith filed, and objection being made by the said U. S. Telegraph Company, to the granting of said petition, the court is of opinion, that in this proceeding, the right of a person claiming ownership in the property sought to be appropriated to intervene and be made a party does not exist. The said application of said Western Union Telegraph Company is overruled, and said petition dismissed at the costs of said last-mentioned company, and to which ruling, said Western Union Telegraph Company excepts, and both parties waiving the calling of a jury, and having agreed to submit the cause to the court without the intervention of a jury, and the defendants

offering to prove that the damages to be assessed would amount to one thousand dollars for the appropriation of the lands mentioned in the statement, and the plaintiff's assenting that the witnesses would prove that the damages to be assessed would amount to one thousand dollars, and the court, by consent of the parties, proceeding to assess the damages to be paid by the plaintiffs to the defendants in respect of the lands mentioned in the statement, find that the dama-
23 ges sustained by the defendants in respect of the lands appropriated by the plaintiffs in the statement mentioned, amount to one thousand dollars; and it is ordered and adjudged, that the plaintiffs, on payment of said sum and the costs of this suit, are entitled to hold the lands, in the statement mentioned, for the purpose of erecting lines of magnetic telegraph, as in the statement mentioned; and it is further ordered, that the plaintiffs pay the costs of this proceeding to be taxed; except the costs occasioned by the filing of the petition of the Western Union Telegraph Company, which said Western Telegraph Company is ordered to pay.

Probate court.

STATE OF OHIO, *Hamilton County, ss:*

I, Edward Woodruff, sole judge and ex-officio clerk of the probate court within and for the county aforesaid, do hereby certify the foregoing to be a true and correct transcript of the proceedings had before our said court, in the matter of the United States Telegraph Company of Ohio, against the Cincinnati, Hamilton and Dayton Railroad Company, as the same appear from the records and files of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 12th day of April, A. D. 1865.

EDW'D WOODRUFF,
Probate Judge and Ex-officio Clerk. [SEAL.]

[5-c. rev. stp.]

Whereupon the following subpœnas were issued out of the Clerk's office of said court, which said subpœnas are in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon the Cincinnati, Hamilton and Dayton Railroad Company, citizen of, and resident in the State of Ohio, if they be found in your district, to be and appear
24 in the circuit court of the United States for the southern district of Ohio, aforesaid, at Cincinnati, on the first Monday, in June

next, to answer a certain bill in chancery, filed and exhibited in said court against them by the Western Union Telegraph Company, citizens of, and resident in the State of New York, hereof they are not to fail under the penalty of the law thence ensuing; and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this 12th day of May, A. D. 1865, and in the 89 year of the independence of the United States of America.

Attest: JOHN McLEAN, *Clerk.* [SEAL.]

Memorandum.

The said defendants are required to enter their appearance in this suit, in the clerk's office of said court, on or before the first Monday of June, 1865, otherwise the said bill may be taken pro confesso.

JOHN McLEAN, *Clerk.*

Security for costs.

On which subpœna, was the following endorsement to wit:

Frank A Armstrong acknowleges himself security for all costs for which the plaintiff may be liable in this suit. See bill.

And afterwards, to wit, on the first Monday in the month of June, A. D. 1865, it being the day to which said writ was made returnable, came the said marshal to whom the said writ was, in form aforesaid, directed and returned the same into the clerk's office of the clerk aforesaid, with his proceedings endorsed thereon, in the words and figures, following, to wit:

Return.

Received this writ May 12th, 1865, and served the within named Cincinnati, Hamilton & Dayton Railroad Company, by handing to F. H. Short, esq., secretary of said company, a true copy of this writ, May 15th, 1865.

A. C. SANDS,
U. S. Marshal, S. D. O.
By F. D. BARTLETT, *Deputy.*

Fees.

Service	$2 00
Copy	50
1 mile	06
	$2 56

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon the United States Telegraph Company citizen of, and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in June next, to answer a certain bill in chancery, filed and exhibited in said court against them by the Western Union Telegraph Co., citizens of, and resident in the State of New York. Hereof they are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness, the Honorable Salmon P. Chase, Chief Justice of the United States, this 12 day of May, 1865, and in the 89th year of the independence of the United States of America.

Attest: JOHN McLEAN, *Clerk.* [SEAL.]

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday of June, 1865, otherwise the said bill may taken pro confesso.

JOHN McLEAN, *Clerk.*

Security for costs.

On which subpœna was the following endorsement, to wit:

Frank A. Armstrong acknowledges himself security for all costs for which the plaintiff may be liable in this suit. See bill.

And afterwards, to wit: on the first Monday in the month of June, A. D. 1865, it being the day to which said writ was made returnable, came the said marshal, to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings endorsed thereon, in the words and figures following, to wit.

Return.

Received this writ, May 12th, 1865, and served the within named United States Telegraph Company by handing to John W. Kirk, agent of said company, a certified copy of this writ, May 23d, 1865.

A. C. SANDS,
U. S. Marshal, S. D. O.
By F. D. BARTLETT, *Deputy.*

Fees.

Service	$2 00
Copy	50
Mile	06
	$2 56

26 And afterwards, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and sixty-five, came the defendants, the United States Telegraph Company, of Ohio, and filed their separate answer in this cause, which is in the words and figures following, to wit:

Circuit court of the United States, southern district of Ohio.—No. 285.

Answer.

THE WESTERN UNION TELEGRAPH COMPANY, *Company, against* THE UNITED STATES TELEGRAPH COMPANY, and another.

The separate answer of the United States Telegraph Company, of Ohio, to the bill of complaint exhibited against them, and the Cincinnati, Hamilton and Dayton Railroad Company, by the Western Union Telegraph Company.

These respondents for answer to so much of the bill as they are advised is material for them to answer, say that they were incorporated under the name of the "United States Telegraph Company, of Ohio," and that they have not acquired by reputation, or otherwise, any other name. They say that they have no knowledge of the incorporation and organization of the Western Union Telegraph Company under the laws of the State of New York, nor of the provisions of those laws, and require proof of the same; and they aver that the State of Ohio have not, by any act, public or private, conferred upon the complainants the franchise of being a corporation in the State of Ohio, or of erecting and maintaining lines of magnetic telegraph in the State of Ohio, or of taking toll for the transmission of tele-
27 graphic dispatches in the State of Ohio, *or of taking toll for the transmission of telegraphic dispatches in the State of Ohio*, or of crossing public highways in the State of Ohio, or of contracting with railroad companies in the State of Ohio for right to erect, exclusive of other companies, lines of magnetic telegraph upon lands held by railroad companies in the State of Ohio; that under the statutes of Ohio, and the policy of said State, the right to construct and maintain lines of magnetic telegraph, and of taking tolls for the transmission of telegraphic dispatches, and of occupying and crossing the public highways of the State, and the streets of cities and villages in the State, and of constructing and maintaining lines of magnetic

telegraph along and upon railroads are franchises, the exercise of which is by said statutes confined to incorporated companies, created by and organized under the laws of Ohio; that the complainants, not being an incorporated company, created by, and organized under the laws of Ohio, do, by their agents and servants, usurp and unlawfully exercise said franchises within the said State of Ohio, by maintaining lines of magnetic telegraph, by attempting to construct a new line on the western side of said railroad, and by taking tolls for the transmission of telegraphic dispatches, and of crossing the public highways, and occupying the streets of cities and vil-
28 lages in Ohio with such line and new line of telegraph: and these respondents aver and charge, that the complainants, so usurping and unlawfully exercising such franchises in violation of the public policy of Ohio, are not entitled to the injunctive remedy of this court to protect them in such unlawful acts. These respondents admit that the complainants and the Cincinnati, Hamilton and Dayton Railroad Company, entered into certain stipulations, as set forth in complainant's bill; but they deny that said stipulations confer any right upon complainants to erect a line of magnetic telegraph upon the lands occupied by the Cincinnati, Hamilton and Dayton Railroad Company, or to exclude any company created and organized under the laws of Ohio, from the erection of lines of magnetic telegraph upon the said lands.

And these respondents aver, that the Cincinnati, Hamilton and Dayton Railroad Company is a body corporate, created and organized under an act of the legislature of Ohio, passed March 2, 1846, entitled "An act to incorporate the Cincinnati, Hamilton and Dayton Railroad Company," published in the 44th volume of the local laws of Ohio, page 280; and an act passed February 8, 1847, entitled "An act to amend the act to incorporate the Cincinnati, Hamilton, and Dayton Railroad Company, passed on the 2d day of March,
29 1846," published in the 45th volume of the local laws of Ohio, page 81; and an act passed on the 15th day of March, 1849, entitled "An act to amend the several acts relating to the Cincinnati, Hamilton and Dayton Railroad Company," published in the 47th volume of the local laws of Ohio, page 173; and an act passed January 11th, 1851, entitled "An act to amend the charter of the Cincinnati Hamilton, and Dayton Railroad Company," published in the 49th volume of the local laws of Ohio, page 458; and in said acts it is provided that said corporation shall have and enjoy all the rights, powers, and privileges, and be subject to all the restrictions and conditions prescribed in the general law, entitled "An act regulating railroad companies," passed February 11, 1848, which is thereby declared to be a part of the charter of said Cincinnati, Hamilton and Dayton Railroad Company, except so far as provisions of said act are modified by the act of March 15, 1849, hereinbefore recited; which amendatory acts of February 8th, 1847, March 15th, 1849, and January 11, 1851, were duly accepted by the Cincinnati, Hamilton and Dayton Railroad Company as amendments to their charter. By the acts aforesaid, the Cincinnati, Hamilton, & Dayton Railroad Company

were made capable in law to have, purchase, receive, possess, sell, convey, enjoy real and personal estate, and to retain to them, their successors, and assigns, all such lands, tenements, and hereditaments as shall be requisite for their accommodation and convenience in the transaction of their business; and were vested with the right and authority to construct a railroad from Cincinnati, in the county of Hamilton, through to Hamilton, in the county of Butler, to Dayton, in the county of Montgomery, on such route or line as might be deemed most eligible and proper by said company in the mode which they might adopt for that purpose, to transfer, take, and carry persons and property upon the same, by the power and force of steam, animal, or any other mechanical or other power, which said corporation might choose to employ; that the directors should have power to determine the number and kind of tracks, turn-outs, branches, carriages, conveyances, storehouses, depots, and other fixtures and machinery, to prescribe the mode of transportation, and should have power to construct a single or double track railroad; that said company had the right to enter upon any land to survey and lay down the said road, and to take any timber necessary to the construction and repair of said work, and for that purpose to appropriate such lands and materials; and said company have the right to retain, own, and possess said material, and to the use and occupation of said lands as fully and absolutely as if the same had been granted and conveyed to said company by deed, so long as said land should be used for the purposes expressed in the said act of March 2d, 1846, but no longer; that said corporation might demand and receive from all persons using or travelling on said road, or for the transportation of property, such rates of toll as the said corporation might think reasonable, which rates they shall have posted up in some public place at each of the depots. And by none of the acts aforesaid, is the Cincinnati, Hamilton and Dayton railroad authorized to confer upon any corporation, not created by the laws of Ohio, a right to use said lands, taken in pursuance of the acts aforesaid, for the construction of their railroad, for the purpose of constructing lines of magnetic telegraph, or of maintaining such lines after they shall have been constructed; nor is there in the acts aforesaid, any stipulation on the part of the State of Ohio, that the lands so taken by the Cincinnati, Hamilton and Dayton Railroad Company, for the purposes of the construction of their road, shall be exempt from a liability to be taken and appropriated to such other public uses as the legislature of the State of Ohio might thereafter authorize.

And the respondents say, that the Cincinnati, Hamilton and Dayton Railroad Company, acting under the authority of the acts aforesaid, appropriated the lands in the bill described, and thereby required a right of way over said lands for the purpose of constructing their railroad, and for no other purposes; that the Cincinnati, Hamilton, and Dayton Railroad Company are common carriers of persons and property from Cincinnati, through Hamilton to Dayton, and are subject to all the conditions and re-

strictions of the act of February 11th, 1848, and of the acts amendatory thereto, and are subject to all the restrictions and limitations imposed by the laws of Ohio upon railroad companies as common carriers.

The respondents further say, that the stipulations in the complainant's bill, as contracts between the complainants and the Cincinnati, Hamilton and Dayton Railroad Company, were not signed and sealed by the makers thereof, in the presence of two witnesses, nor was such signing and sealing attested by two witnesses, *nor was such signing and sealing attested by two witnesses,* subscribing their names thereto, nor was such signing and sealing acknowledged by such makers before a judge of the supreme court, or of the court of common pleas, or a justice of the peace, mayor, or other presiding officer of an incorporated town or city, or any clerk of the common pleas, or of any consul of the United States, resident in a foreign country, or before any other person authorized by law to take the acknowledgment of deeds or other instruments of writing; nor were such writings delivered for record, or recorded in the office of
33 the recorder of deeds, in the counties of Hamilton, Butler, and Montgomery, in which said lands lie, nor had the complainants erected a line of magnetic telegraph on the western side of the track of the Cincinnati, Hamilton and Dayton, at the time of the location of the line of telegraph of these respondents, and of the appropriation of said lands by these respondents, nor at the time of the judgment in condemnation set forth in the complainant's bill.

And the respondents say, that the art of telegraphing by means of the magnetic telegraph, was secured to Samuel F. B. Morse, by letters patent from the United States, in the years 1840 and 1846, for the respective periods of fourteen years from said dates, (which are usually known by the name of Morse patent,) and that in the year 1854 the first patent, and in the year 1860 the second patent expired; and the complainants, with a view to create an illegal monopoly in the practice of telegraphing by means of the magnetic telegraph, after the said letters patent should expire, or had expired, and to restrain all other persons or corporations from erecting, maintaining, or using lines of magnetic telegraph upon said railroad, and to prevent telegraphing by other persons or corporations between the cities of Cincinnati and Dayton, and the towns and places between those points, on or near the line of the railroad of the Cincinnati, Hamilton and Dayton Railroad Company, did, on the 30th day of
34 November, 1857, and on the 29th day of August, 1864, enter into the stipulations in the bill alleged with the Cincinnati, Hamilton, and Dayton Railroad Company for that purpose; that the complainants had, on the first day of November, 1864, the poles and other necessary fixtures for a line of magnetic telegraph erected on the eastern side of the track of the Cincinnati, Hamilton and Dayton Company's railroad, and within the limits of the right of way of that company, but without any authority of law, which poles then were, and at the time of filing the bill, continued to be sufficient for the support of all the lines or wires necessary or convenient for the

business then done, and that might reasonably be expected to be done, by the complainants claiming to be owners of such line of magnetic telegraph, so long as said poles should continue to be fit for use; that such poles were then in fair order, and did not then require renewal or expensive repair; that the width of the right of way of the Cincinnati, Hamilton and Dayton Railroad Company, from Cincinnati to Dayton, is on an average from 50 to 100 feet; that the two tracks occupy, including the necessary space allowed for the projection of the cars beyond the rails and windage the space of feet; that the space required for a line of magnetic telegraph, in width, including the arms and other fixtures necessary for the suspension of the lines or wires, does not exceed five feet; that between the line located and erected by the respondents on the west-
35 ern side of said railroad, and the western track is a space of 32 feet, which is sufficient space for the erection of lines of magnetic telegraph without, in any material degree, interfering with the practical uses to which said railroad company are authorized to put said land under their charter; that the necessary distance between the different lines of wires attached to said poles does not exceed eighteen (18) inches, and as many wires can be attached to the poles as the height of the poles, placing the wires eighteen inches apart, and above the distance, where they might interfere with passing travel, will allow; that on the first day of November, 1864, the complainants had on the poles on the eastern side of the tracks of the Cincinnati, Hamilton and Dayton railroad two wires, and, there then was, and, at the filing of the bill, continued to be, space on said poles, sufficient for three more lines or wires, which additional wires were sufficient for all the business of the complainants; that the holes and excavations in the bill alleged, as made by the complainants, on the western side of said railroad, are not for the repair of any existing line of magnetic telegraph, but for the erection of a new line of telegraph not authorized by law; that on the third day of December, 1864, these respondents became a body corporate under the act of the legislature of the State of Ohio, passed May 1st, 1852, entitled "An act to provide for the creation and regulation of incorporated companies in the State of Ohio, and the amendments thereto, by filing in the office of secretary of state of Ohio, a certificate acknowledged before a justice of the peace, and certified by the clerk of the court of common pleas, and thereby became authorized, among other things, to construct lines of magnetic telegraph upon any route to be by them selected, from any convenient point in the city of
36 Cincinnati, through Hamilton, to the city of Dayton; and in virtue of the act aforesaid, and to avoid, in any manner, interfering with the line of complainants, did, on the twenty-fifth day of January, 1865, locate their line on the western side of the Cincinnati, Hamilton and Dayton railroad, and within the limits of the right of way of said railroad company, and upon the lands of which the Cincinnati, Hamilton and Dayton Railroad Company, were the owners, which lands lie in a continuous tract in the counties of Hamilton, Butler and Montgomery.

And, on the 26th day of January, 1865, the respondents instituted proceedings in the probate court of Hamilton county, Ohio, for the assessment of the compensation, which the owners of said land might be entitled to receive, in consequence of the appropriation of that land for that purpose to oppose which proceedings the complainants employed counsel, who, on the 7th day of February, 1865, appeared in said court and opposed said proceedings, and thereby had notice of the location of the line of these respondents on the western side of said railroad; which proceedings are now pending in the court of common pleas of Hamilton county, Ohio, and are undetermined.

And afterwards, that is to say, on the 10th day of March, 1865, a bill being then pending in the legislature of Ohio, entitled "A bill supplementary to the act entitled an act to provide for the creation and regulation of incorporated companies, in the State of Ohio, passed May 1st, 1852," the complainants employed counsel to oppose the same, who, on that day, appeared before the judiciary committee of the House of Representatives of Ohio, and opposed the same on the ground that telegraph lines along railroads ought to be restricted to the outer edges of the right of way of railroads, and thereby induced said committee to introduce into said bill a clause to

37 the effect that the right of magnetic telegraph company to use lands held by any railroad company, for the permanent structure of the telegraph, shall be limited to the land, which lies within five feet of the outer limits of the right of way of such railroad company, whenever it is practicable to erect the line within those limits; and said bill so amended became a law on the 31st day of March, 1865; and as soon as the complainants, so having notice of the place of location of the line of these respondents, became satisfied that said bill would be so amended so that the location of the line of these respondents would be by law confined to a margin five feet in width on the western side of said railroad, they, on or about the day of , 1865, did without any necessity arising from defects of their existing line on the eastern side of said railroad, or from any present or prospective increase of their business, requiring a new line of poles but with a view to defeat the location of the line of these respondents, and prevent the erection of a competing line of magnetic telegraph on that railroad, commend the digging of holes for a line of telegraph poles within the limits, to which, by said act of March 31st, 1865, these respondents were authorized to construct their lines, and with a view more effectually to do so, they dug such holes, not in a line parallel to the outer limits of the right of way of said railroad, but in a zig-zag direction, so that the line, when erected, should occupy the whole width of the marginal five feet allowed by law to these respondents, whereby, as the complainants designed and intended, the lines of the respondents and those of the complainants, should the complainants erect lines at the places indicated by the holes they have caused to be dug, will in many cases unavoidably coincide and interfere with each other in case the complainants, to harass the respondents, suspend their wires at the same height [as] the wires of the respondents, but the respondents

38 aver that such coincidence may easily be avoided by the complainants suspending their wires higher or lower than the wires of the respondents, as is usually done when two companies occupy the same poles with different lines of wires; and these respondents deny that the holes so dug were dug at the points indicated by the superintendent of the Cincinnati, Hamilton and Dayton Railroad Company.

And, on the day of April, 1865, these respondents, so having located their line of magnetic telegraph on the western side of the track of the Cincinnati, Hamilton and Dayton railroad, and on the lands of the Cincinnati, Hamilton and Dayton railroad instituted proceedings in the probate court of Hamilton county, Ohio, for the assessment of the compensation which the Cincinnati, Hamilton and Dayton Railroad Company, the owners of said lands, might be entitled to receive, by reason of the appropriation of so much of the lands of the Cincinnati, Hamilton and Dayton Railroad Company, lying within the marginal five feet on the western side of the right of way of said company, as might be necessary for the erection and maintenance of the line of magnetic telegraph of these respondents, for that purpose; to which proceedings the Cincinnati, Hamilton and Dayton Company were made parties; and thereupon such proceedings were had that on the day of April, 1865, the said court adjudged that these respondents, upon the payment of one thousand dollars, being the damages assessed, and the costs of the proceeding, hold the property in the proceedings mentioned, for the purpose for which the same was appropriated, which are the lands upon which the respondents have proceeded to construct a line of magnetic telegraph, in the bill alleged, which judgment remains in full force and effect, and these respondents, before taking possession of said

39 lands, paid the Cincinnati, Hamilton, and Dayton Railroad Company, the owners thereof, the damages assessed, and paid the costs of the proceedings. And being so authorized to erect their poles and wires, and other necessary fixtures on said lands, and acting in pursuance of the authority of the acts of the legislature of Ohio, of May 1st, 1852, and March 31st, 1865, before recited, and under the judgment of the probate court of Hamilton county, Ohio, these respondents have in good faith proceeded to construct the lines of magnetic telegraph designated in their charter, on the lands in the bill described, and, in so doing, have not erected their poles, wires, and other necessary fixtures in such close proximity to any other line of magnetic telegraph authorized by law to be constructed, as to interfere mechanically with the practical working of such telegraph.

And these repondents say that the erection and maintenance of their line of magnetic telegraph in the manner in which, and at the places at which they are now constructing it, will not, in any material degree, interfere with the existing line of magnetic telegraph so unlawfully held by the complainants, nor will its erection and maintenance interfere with the lawful business of the complainants, or in any manner prevent the mechanical working of the existing line of the complainants, or inflict any injury upon the complainants, for

which these respondents, if adjudged to be wrong doers, cannot fully compensate the complainants in damages.

And these respondents say that they do not claim, and have not at any time heretofore, claimed the possession of the lands so by them appropriated for the construction of their line of magnetic telegraph, from or in consequence of any grant or conveyance made to them by the Cincinnati, Hamilton and Dayton Railroad Company, nor from in consequence of any contract made with or consent given by said railroad company, but their title to said lands is derived wholly from their appropriation of said lands in pursuance of the provisions of the acts of May 1st, 1852 and March 31st, 1865, before recited.

And these respondents say that the Cincinnati, Hamilton and Dayton Railroad Company were, at the time of the said appropriation and proceedings, the owners of said lands, and they deny that the complainants were the owners thereof.

M. E. CURWEN & W. Y. GHOLSON,
Solicitors for Defendant.

And afterwards, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and sixty-five, affidavits were filed in this cause, which are in the words and figures following, to wit:

Pl'ffs Affidavits.—James Hoak.

WESTERN UNION TELEGRAPH C'Y,
vs.
THE UNITED STATES TELEGRAPH CO. OF OHIO,
et al.

United States court for southern district of Ohio.—In chancery.

Affidavits.

STATE OF OHIO, *Hamilton county, sct:*

James Hoak, being duly sworn on his oath, says: I have been in the employment of the Western Union Telegraph Company, about six months as foreman, in building and repairing lines of telegraph. On the 14th March last, under the direction of Mr. Bristol, superintendant of construction and repairs of said company, I commenced the construction of a line of telegraph for said company along the road-way of the Cincinnati, Hamilton and Dayton Railroad Company from Cincinnati to Dayton. This line was to be located on the west side of said railroad's right of way, at about the distance of thirty feet from the west line of rails of the main track of the road, and the poles were to be about 21 feet above ground, with intermediate distances of about sixty yards. On the said 14th March, I commenced with a working part the construction of said line at the point where said railroad crosses the northern corporation line of Hamilton, in Butler county, and dug the holes, four feet deep for the posts from

that point, going north to the point about two miles distant where the Eaton and Hamilton railroad intersects the said Cin., Hamilton and Dayton Railroad. Having completed the excavations to that point, I returned with my party to Hamilton, and set a row of stakes through the town of Hamilton, to indicate the places where the holes for posts were to be dug, but deferred digging the holes until
42 the remainder of the line should be finished, to avoid the inconvenience to the public of the open excavations through the town. I recommenced the digging of the holes when outside of Hamilton corporation line, and continued the work until we reached Carthage, to which point another working party of the Western Union Telegraph Company, had dug the holes from Cincinnati. I then returned with my working party to Hamilton. In the meantime the other working party of which I have spoken, after finishing the excavations from Cincinnati to Carthage, had gone from there to Dayton, to begin the line from that point, working south towards Hamilton. After my return to Hamilton, the exact day I am not able to state, but think it was in the first week of April, I was informed that a third working party under orders from the United States Telegraph Company, had commenced excavating holes for a line at or about the same point two miles north of Hamilton corporation, which I have already referred to. I at once proceeded along the railroad track to that point, and there found a working party of five or six men engaged in digging holes along the same line where our holes were dug. I think they had not then excavated more than ten or fifteen holes, and were working south towards Hamilton. The holes, as dug by them, were in the direct line of the holes so dug by us, and just as near to our holes as the nature of the soil would permit, say an average distance of 1½ to 2 feet. I then observed to one of the party, who appeared to be a foreman, that two lines of telegraph could not be worked in those holes. He replied that it was the intention to destroy the other line; that his orders were to dig the holes for their line so as to destroy our line. Our line of exca-
43 vations north to Dayton, was, I think, about completed at the time the said United States Telegraph Company began its excavations. A day or two afterwards I saw at Hamilton Mr. Henis, foreman of another working party of the United States Telegraph Company, and I told him that they were so digging their excavations that both lines could not be worked. He replied that he knew it was so, and he should continue so to locate the line, for he had his orders to do so and to destroy the working of our line; that there was no use in our quarreling about it, as the two companies were rich and could fight it out. I next proceeded to erect our line of poles south of Hamilton, and put up about one mile in length, coming south, when I was temporarily stopped for the want of poles. At this time only a few holes had been dug south of Dayton, by the other company, so that for the greater part of this mile there were no holes dug except for our line. Their working party continued their excavations, but in some instances on one side, and in others on the opposite side of our line, so that their wires will often cross our line.

We have up to this time put up only about three miles of our poles, having been delayed by failures to deliver and distribute the poles along the line. The other company has put up a continuous line of poles from Dayton to Glendale, and are now engaged in putting the wire on same. I have examined the line erected by the United States Telegraph Company all the way from Glendale to Dayton, and am of opinion that it interferes mechanically with the working of wires to be placed on the line so being constructed by our company. Both lines cannot be worked; in other words, one destroys the working capacity of the other. I have had an experience of nearly twelve (12) years in constructing telegraph lines, and am therefore able to
44 form an opinion about which I have testified. During the excavations for our poles no objection was made by the Cincinnati, Hamilton and Dayton Railroad Company, or any of its officers, to the location selected by me as a line for the Western Union Telegraph Company.

JAMES HOAK.

Sworn to before me, and subscribed in my presence this 18th day of May, A. D. 1865.

[N. SEAL.] HENRY HOOPER.
Notary Public, Ham. Co., Ohio.

Affidavit of M. Channing Bristol.

STATE OF OHIO, *county of Hamilton, sct:*

M. Channing Bristol, being duly sworn upon oath says: I am superintendent of construction and repairs of the lines of telegraph belonging to the Western Union Telegraph Company, south and west of Columbus, Ohio, and have been engaged in the business of constructing and repairing telegraph lines for more than four years. The lines of said company from Cincinnati to Dayton are under my superintence. Prior to December last, I had heard that the company intended to erect a new line between Cincinnati and Dayton, on the west side of the road right of way of the Cincinnati, Hamilton and Dayton railroad, but I had no notice of this from headquarters until either in December or the fore part of January, at which time Anson Stager, the general superintendent of the Western Union Telegraph Company, enquired of me if I could put up that line immediately, if furnished with the materials. I answered that I could. I heard nothing further from him on the subject until about the 10th March, when I received a dispatch from him to commence work on the line at once. I then employed two gangs of hands, one under James Hoak, as foreman, the other under Frank Boyle. I directed Hoak to commence about 2 miles north of Dayton, and work south, and Boyle to begin at junction of Cincinnati, Hamilton and Dayton railroad, and Ohio and Mississippi railroad, in Cincinnati, and work north. Both working parties began about the 14th March. The di-
45 rections given by me to the foreman, were to keep, if possible, 30 feet from the west line of rails along the single track

part of the road, and not nearer than 20 feet where there was a double track, if the ground would admit of it. I had applied to Mr. L. Williams, the assistant superintendent of the Cincinnati, Hamilton and Dayton road, to ascertain where the west line of their road-way was, but he said he did not know. In some places, the fences are within about 10 feet of the track, so that many of our excavations for this line are inside of the fields. I heard of no objections from Mr. Williams, or any other officer of the railroad as to the location of this line. Our working parties were engaged in the excavations of the holes, and proceeded actively with this work, and I thing, the holes were all dug for the entire line from Cincinnati to Dayton, before any work was commenced by the United States Telegraph Company, except on that part of the line which runs through the towns of Hamilton, Glendale and perhaps Ludlow, where the stakes were driven in to mark the places for the holes, and they were not then excavated, as I had directed our men not to do so until our poles were distributed. I have examined the lines located by the United States company along the entire route from Dayton to Glendale, over which they have *have* put up a continuous line of poles, and are now engaged in putting on the wires. It is impossible for our line and their line to work together; they will so interfere with each other as to prevent the working of either, and one of them must be abandoned. The wires of the respective lines will come in contact in many places, and where they do not actually touch, there are many points at which they are in such close proximity as to be liable to touch by the swaying of the poles or wires. Along that part of the line where poles have been erected by both companies, and where our poles
46 were first erected, the two lines of poles appear to be about in the same line of direction, presenting the appearance of one line of telegraph with an extra number of poles. On this part of the lines their top wire touches the top of our poles, and their wire from the cross arms touches the insulators on our poles. I consider eighteen inches space between the wires to be necessary to the safe working of two lines of wires, because by changes of temperature and other causes, a line of wire is liable to extension, and by sagging and the action of the wind, will vibrate from a straight line. I prefer two feet of distance for greater safety and to avoid the danger of collision. For the most of the entire route the wires of the two companies will be within the space of 18 inches, and will range from that distance to points of actual contact in many places.

M. CHANNING BRISTOL.

Sworn to before me, and subscribed in my presence this 20th day of May, A. D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public.

Affidavit of J. F. Stevens.

STATE OF OHIO, *Hamilton county, sct:*

J. F. Stevens, being duly sworn upon his oath says: I am a telegraph operator and have been engaged exclusively in that business

since the year 1849, and am now engaged in the office of the Western Union Telegraph Company at Cincinnati, as the chief operator. I have read the foregoing affidavits of James Hoak, and M. Channing Bristol, and am of opinion that the two lines as described by them cannot both be worked. I do not agree with Mr. Bristol, that two independent wires of telegraph, that is two wires operated by independent batteries, can be safely worked within the distance of eighteen inches from each other. I hardly consider a proximity of two feet safe, under such circumstances, for even at that distance there is liability of contact. Where the wires are operated by
47 the same battery, although there may be nearly the same danger of interference, yet the consequences are not the same, for the operator having command over both wires so interfering, has only to detach one, and the current then proceeds regularly from the point of collision; but if the interference is between independent lines or wires, this remedy cannot be applied. The danger of collision and interference is also greater at the same distance, in the case of independent lines on independent poles, than on the same line of poles, arising principally from the frequent liability of poles to lean from the perpendicular, and on curves or angles from a wire breaking loose from the poles to which it is attached, and from the action of wind in swaying the wires from side to side. The consequence of contact between wires is, that if a message is at the time passing over one of the wires and the other is unoccupied, it may from the point of contact pass over both, and certainly will pass over both if the wires are in the same state of polarity, but if under the same circumstances a message is passing over both the wires, the two messages from the point of contract become confused and unintelligible. It frequently happens that when wires are in such proximity as to come together, they do not merely touch and separate, but they twist around each other and permanently adhere. This is a common occurrence.

J. F. STEVENS.

Sworn to before me, and subscribed in my presence this 30th day of May, A. D. 1865.

[N. SEAL.]

HENRY HOOPER,
Notary Public, Ham. Co., O.

Affidavit of Wm. D. McCarty.

STATE OF OHIO, *Hamilton county, sct:*

William D. McCarty, being duly sworn upon his oath says: I am and have been for the last five years in the employ of the Western Union Telegraph Company, in the business of repairing and
48 constructing lines of magnetic telegraph. About the first of April last, and after the Western Union Telegraph Company had located its new line on the west side of the Cincinnati, Hamilton and Dayton Railroad, by digging the holes intended for the posts, I had a conversation with Robert Hines, at Dayton. Mr. Hines was in

the employ of the United States Telegraph Company of Ohio, in the business of constructing its telegraph lines, and was its superintendent in that branch of its business. The conversation was held after the said United States company had commenced constructing a line along the same route of our new line. I asked Mr. Hines whether he was going to set his line of poles inside or outside of our new line, that is between our line and the track, or outside of our line and nearer to the outside of the road-way. He said they would set their poles regardless of our line, to suit their own convenience. I have at different times been along the whole length of the Cincinnati, Hamilton and Dayton railroad, and have examined the location of the poles and wires constructed by said United States Company, in reference to the line so located, for the new line of the Western Union Company, and find that the two lines cannot be operated; one or other must be abandoned. Where poles have been set up by the Western Union Company, the other company has set its poles so close that their wires touch the insulators on our poles. In other places their line of poles are in the same direct line with the line located by our company. In other places their line crosses ours, and generally is in such close neighborhood to our line, as to make our line practically useless.

WM. D. McCARTY.

49 Sworn to before me and subscribed in my presence this 6th day of June, A. D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public, Ham. Co., O.

Cornelius Murphy.

Cornelius Murphy being duly affirmed, says: I was one of the working party under James Hoak, in digging holes for the new line of the Western Union Telegraph Company, on west side of the Cincinnati, Hamilton and Dayton railroad. Our party began at Hamilton, and dug the line of holes to Carthage, then retured to Hamilton. Through the town of Hamilton, we set the stakes, but did not dig the holes. Beyond Hamilton, going north, we continued to dig the holes. In the forepart of April, and after our party had dug the holes up to and beyond Hamilton, I met a working party engaged in digging holes for another telegraph line, which they said was the United States Company. That party was then digging holes for their line through Hamilton, and in about the same line that our stakes were stuck. One of our party told them that they were digging the holes so that their line would interfere with ours. They said that was their orders.

CORNELIUS his × mark MURPHY.

Witness—
M. C. BRISTOL.

Affirmed and subscribed before me, this 6th day June, A. D. 1865.

[SEAL.] HENRY HOOPER,
Notary Public, Ham. Co. O.

Affidavit of Jno. Wm. Hoak.

STATE OF OHIO, *Ham. county, sct.*

John Wm. Hoak, being duly sworn on his oath, says: I was one of the same working party with Cornelius Murphy, of which my father, James Hoak, was the foreman; I went with my father up to the place about two or three miles above Hamilton, near the Miami bridge, where another working party was engaged in digging holes for another telegraph line. It appeared that they had just begun to dig the holes, for they had only dug a few, but those were close to the holes which had been then dug by the working party to
50 which I belonged. My father asked them what they were doing. One of them, who appeared to be the foreman, answered my father, that they were digging the holes for the United States Telegraph Company. My father then asked why they were digging so near to our holes. He said their orders were to dig them in a line, so as to destroy our line.

JOHN W. HOAK.

Sworn to before me, and subscribed in my presence, this 6th day of June, A. D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public, Ham. Co., O.

Affidavit of Frank Boyle.

STATE OF OHIO, *Hamilton county, sct:*

Frank Boyle, witness for the plaintiff, deposes and says: I was a foreman for a working party in digging the holes for the new line of the Western Union Telegraph Company. I commenced in the city of Cincinnati, at the junction of the Ohio & Mississippi railroad, and Cincinnati, Hamilton & Dayton railroad, on the 13th of March last, and dug the holes from there to Carthage, a distance of ten miles. I then went with my party to Dayton, and commenced digging the holes at Dayton, working south, about the 20th of March. I dug the holes from that point to within about four miles of Hamilton: Mr. Hoak and his party dug the balance of the holes between Carthage and the point where I stopped above Hamilton: I finished about the ninth or tenth of April. My instructions, as to the line, where the holes were to be dug, were to dig them over that part of the road where there was a double track, and over that part of the road where there was only a single track, thirty feet west of the single track. I followed these orders strictly, measuring with a tape line the distance for each hole, wherever the nature of the ground
51 would admit of it. I had no instructions to make this line zig zag, but to lay it in measured distances as I have described; and I did not depart from these measured distances, except where the nature of the ground compelled me; and whenever I did diverge I got back to the line as quick as practicable. My working party consisting of myself and five men, being the only working party of the

Western Union Telegraph Company from Dayton to the four mile point; I saw no work done by any other party until after I had completed our line. I first saw a working party of the United States Telegraph Company of Ohio, near Hamilton, after we had got through. The fences along the west side of the railroad are not at any fixed distance from the track; some of them being within eight or ten feet of the track, and others again, more than thirty feet; consequently, in several places, our holes are dug inside of the fence. There are no stakes or other marks to shew where the outer line is.

F. BOYLE.

Sworn to before me, and subscribed in my presence, this 15th day of June, A. D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public, Ham. Co., O.

James Hoak, re-examined.

James Hoak, being re-examined and duly sworn upon his oath, says: In laying the part of the line, to which I dug the holes from Carthage to the point above Hamilton, I set them thirty feet from the west line of the railroad, where there was a single track, and twenty feet feet where there was a double track, except for two miles above Hamilton, where, by a mistake in measurement, the twenty feet distance was applied to the single track. My instructions were to keep the holes in a straight line, wherever the ground would permit it, and I followed these orders strictly. There were
52 no marks to indicate where the west line of the roadway ran; so far as the fences are concerned, some are within twenty feet of the track, along my line of digging, and at other points they are fully sixty feet from it. From appearances, the travelled track seems to lay nearer to the east than to the west side of the roadway, so as to allow of a second track on the west side. This was the reason we made allowance in laying our line for a second track. At the time the United States Telegraph Company commenced digging their holes north of Hamilton, our holes had only been dug a few days, and were in a good state for setting poles, We put stakes in them, as land marks, to shew where to throw our poles off from the railroad as we passed along, in order to make them visible from the train.

JAMES HOAK.

Sworn to before me, and subscribed in my presence, this 15th day of June, A .D. 1865.

[N. SEAL.] HENRY HOOPER,
Notary Public, Ham. Co., O.

And afterwards, to wit: on the nineteenth day of June, in the year of our Lord, one thousand eight hundred and sixty-five, came the defendants, by their counsel, and filed affidavits herein, which are in the words and figures, following, to wit:

Def'ts Affidavits.—Jno. W. Kirk.

WESTERN UNION TELEGRAPH COMPANY,
v.
UNITED STATES TELEGRAPH COMPANY.

John W. Kirk makes solemn oath, and says that he is the president of the United States Telegraph Company of Ohio, and as such, has the general charge of the construction of the line of telegraph from Cincinnati to Dayton, on the Cincinnati, Hamilton and Dayton railroad. The work is done by contractors, who take their general directions from me. Soon after the judgment of the probate
53 court, in the condemnation suit had been rendered, about April 8th, 1865, I went to D. McLaren, the superintendent of the railroad, with a view of getting instructions from him, as to the proper place in which to erect the line which the court had authorized us to build. I did this, because I had understood, though I had no personal knowledge on the subject, that the Western Union line were digging holes on the west side of the railroad, and that Mr. McLaren had authority to direct where the new line of the Western Union Company should be placed. I stated to him my desire to avoid all interference and collision with the Western Union line. He enquired where we proposed to dig our holes. I informed him, that our plan was to place the poles two and a half feet from the outer limit of the right of way, that is, between the outer margin and the western track. He then stated to me that there would be no danger of collision, since he had given orders to the Western Union line to dig their holes as near to the outer edge of the right of way as practicable, putting the hole just inside of the company's right of way. This direction, if obeyed, would place the two lines of poles two feet and a half apart, less the diameter of their poles, and half the diameter of our poles. My interview with Mr. McLaren, took place at Dayton. I followed him to that city, in conseqence of information which Judge Matthews gave me, as to his authority. Finding that Mr. McLaren was from home, I called on the counsel of the company, Judge Matthews, for information, as to the views of that company, in relation to our rights under the judgment of the probate court. Judge Matthews referred me to Mr. McLaren, and I accordingly went to him. I gave the directions, which Mr. McLaren
54 had approved, to Robert Hine, who had charge of the construction of the line in and about Hamilton, and to Mr. Dolphin, who was to commence his work at Dayton, and to work towards Hamilton. I have never given any other instructions to any one in charge, nor to any of the workmen. On reflection, I think, I saw Mr. McLaren on April 12th, and on the same day or the next day, I gave my instructions to the men in charge of our work; at that time, the Western Union line had had holes dug at Hamilton for a new line, and some within a mile south of Hamilton, but none south of that. The workmen of that line were then in and about Hamilton, Our poles had, at that time, been distributed from Dayton to Glen-

dale, at the stations, and had been there for some time. Our poles were at Glendale, and all the stations north of Glendale as far as Dayton, long before the Western Union line had dug any holes on the western side of the railroad. There never was any negotiation between our company, and the Cicinnati, Hamilton and Dayton Rail-Road Company, as the bill seems to suggest, with respect to the acquisition of any right of way over that road by contract. Our company was not in existence when the arrangement between the Western Union line and the railroad was made, in September, 1864. The officers of the Cincinnati, Hamilton & Dayton railroad inform us, at the outset, that if we wanted to go over their road, we could get nothing but what the law gave us, and only by the force of judicial proceedings. Our line, on that railroad, is now constructed from Dayton to Ludlow, (Cumminsville,) and as soon as the batteries are put on and the work tested, we will have connections with New
55 York, Portland, Maine, Albany, Buffalo, Detroit, Chicago, La Crosse, St. Louis, Indianapolis, Columbus, Pittsburg, Harrisburg, Philadelphia, Baltimore, Washington; beside intermediate points, and less important places. We expect this line to be in operation, and in connection, and to be enabled to send telegrams to all these points by the 15th day of June, 1865.

J. W. KIRK.

Sworn to before me and subscribed in my presence, this 5th day of June, 1865.

[N. SEAL.]

JNO. KAW,
Notary Public, Ham. Co., O.

Francis B. Smith.

THE WESTERN UNION TELEGRAPH COMPANY
against
THE UNITED STATES TELEGRAPH COMPANY.

Francis B. Smith makes solemn oath and says: I have been intimately connected with telegraph operators for about four years, having been engaged in telegraph offices, and in the construction of telegraph lines. During the past two years I have been engaged in building lines of telegraph as a contractor. In that time 660 miles of telegraph have been built under my direction as a contractor, besides other lines on which I was not contractor. I have had occasion, in this way, to observe everything connected with the building of lines, the proper space for wires, and the like. I have a subcontract from Mr. Adams for building the line for the United States Telegraph Company, of Ohio, from Cincinnati to Dayton, doing all the out-door work to the putting the wires into the windows of the telegraph offices. I took my instructions from John W. Kirk. He directed me to dig the holes two and a half feet inside of the outer line of the railroad company's right of way. The Western Union line had, at that time, dug some holes. With respect to these, Mr. Kirk's directions to me were to pursue the line 2½ feet from

56 the outside limit, and to pay no attention to the holes already dug there, if those holes came directly in my way; but if the Western Union line holes were not directly in my way, but on one side, to avoid any collision with them as far as possible, and, if necessary, to diverge from the direct line for that purpose. I gave these directions to my foremen, James Dolphin and David A. Vanvalkenburg. I was with the workmen one or two days, and I saw that they carried out these directions. My purpose in going one day was to see that they did just that, and nothing else. Mr. Kirk gave me instructions to avoid any annoyance to the Western Union line, and I told the workmen the same; and, as far as I could see, the workmen did no intentional injury to them. Up to to-day, Monday, June 12, the Western Union line have 89 standing poles on the western side of that railroad; 55 have cross arms on, ready for the stringing of the wires, and the remainder have no arms on them. There are no wires strung on any of these poles. The U. S. Tel. Co. of Ohio's line from Dayton to the Ind. & Cin. R. R. depot will be finished to-night, and by the end of this week will be in complete working order. This line will then form the connecting link with the lines of the United States Telegraph Company, extending from Dayton to Portland, Maine; Boston, New York, Philadelphia, Baltimore, Washington, Pittsburg, Wheeling, Buffalo, Cleveland, Toledo, Detroit, Chicago, Milwaukee, La Crosse, Springfield, Illinois; Alton, St. Louis, Terre Haute, Indianopolis, Columbus, Ohio, besides other less important towns. In my opinion wires can work successfully, if well strung at the distance of eighteen inches apart. It is common on poles in cities to place them at shorter distances. It is com-

57 mon for two companies to put their wires on the same poles. The lines of the Western Union line, for example, at Dayton, are on the poles of the United States line. When numerous wires are strung on the same poles, the practice is to put on the top of the poles, for example, a cross arm about thirty-six inches long; then one at a distance of about eighteen inches below the first one, a little longer or a little shorter than the first one; a third in like manner, longer or shorter than the second; a fourth cross arm, &c. Where rival lines are compelled to occupy the same ground, so that the poles of the two lines are in line, it is practicable to work both lines by arranging the insulators to correspond. I put up a line in Buffalo in this way, and it worked successfully. By a change of cross arms, the poles on the railroad which now appear, if carried out in practice, to interfere with each other, may be made to carry the two lines successfully.

FRANCIS B. SMITH.

Sworn to before me, and subscribed in my presence at Cincinnati, Ohio, June 12th, 1865.

[N. SEAL.]

JNO. KAW,
Notary Public, Ham. Co., O.

Rob't K. Hine.

United States circuit court, southern district of Ohio.

THE WESTERN UNION TELEGRAPH COMPANY
against
THE UNITED STATES TELEGRAPH COMPANY, of Ohio, and the Cincinnati, Hamilton, and Dayton R. R. Co.

Robert K. Hine makes solemn oath and says: I am a telegraph builder; worked for the Morse company through New York State, from Utica to Buffalo; helped build lines from Buffalo to Erie; have been engaged in this business for five or six years. I am now employed by Theodore Adams, the contractor, who is building the line of the U. S. Telegraph Co., of Ohio, along the western side of the Cincinnati, Hamilton, and Dayton R. R., taking my general directions, as to the place where the line shall be constructed,
58 from John W. Kirk, the president of that company. John W. Kirk directed me to go on the line between Dayton and Cincinnati on the 8th of April, 1865. I went to Hamilton in the morning of April 10th; began work in the afternoon of April 10th, 2½ miles above Hamilton, commencing at the junction of the Eaton, Richmond, and Ham. R. R., and the Cin., Ham., and Dayton R. R., with six hands; begun digging holes and setting posts, working towards Hamilton, on western or southwestern side of the railroad; took directions from John W. Kirk as to where to put holes within the margin of the five feet from the outer line of the railroad. When I first began I assumed that the railroad fence was the outer limit of the R. R. company's right of way, which, at that point, was from 27 to 30 feet from the center of the western track. There were then remains of holes already dug there, indicated by ties and rails, and fence boards put in them. Most of the holes that I saw were already filled up by falling in and by the wash of the road, so that but for the ties, &c., put into the holes, we would never have known that there had been any holes dug there. From the junction to Hamilton they were nearly all filled up, so that they would have to be dug over again. This side of Hamilton my work led me to notice only in passing the parts of the road at a distance of 10 poles each side of the stations, the poles being on an average 68 yeards apart. At the stations the diggers who preceded us had generally skipped about six places for poles each side of the station, only marking the points by driving in a stake. At most of the places that I noticed the old holes were filled up. There were no poles set up by the Western Union line until Thursday, the 13th, or Friday, the 14th of
59 April, 1865. A car load, containing some twenty or thirty poles, came to Hamilton a day or two previous to that time. The foreman of the gang which was putting them up told me that the poles, which were chesnut, came from the Central Ohio railroad, from Clay Lick or Blackhand, about twenty miles west of Zanesville. The gang began to put up these poles below Hamilton, three pole's

space below the station there, and put up all they had. I came away Friday morning, April 14th, and on my return in the morning of Tuesday, the 18th, all the poles were put up. I have not seen the line since the 25th, and up to that time no additional poles had been put up by the Western Union line. Having charge of the work of building the line of the U. S. Telegraph Company, of Ohio, on the C., H., and D. R. R., at that time I noticed particularly the manner in which the Western Union line had dug their holes. They were dug first diagonally across the margin of five feet of the right of way; for example, from the west side of the margin to the east side. They would then proceed for a short distance in a straight line on the outer side of the margin; then cross diagonally to the western side, and so on. The effect of thus digging the holes would be, that if a line of poles and wires had been constructed there, it would have occupied the entire margin of five feet, and would have prevented the building of another line within that five feet. There were then no cross arms on these poles. I pointed out the manner in which the holes were dug to the roadmaster of the C., H., and D. R. R. Co., as we passed along. As far as I observed, the holes made by the Western Union line the prevailing rains had so washed the dirt into them that the poles could not be placed in them without digging them out again—a work which, in my experience, involves about the same time, expense, and trouble as digging new holes. I noticed when the men were putting up the poles they had, as a general thing, to clean all the holes out, though in some places where the ground was hard and level, the rain had not washed the holes so as to fill them. In my opinion the digging of the holes was a waste of labor. Nothing was gained by it. The practice of telegraph builders, so far as I ever knew, has always been to follow up the digging, in a day or two at longest, by the planting of the poles. The putting in of the stakes and rails spoken of did no good, except to mark the place. I took my directions as to the place where the holes were to be dug, which were to dig the holes two and a half feet from the outer limit of the railroad company's right of way, from John W. Kirk. I followed these orders except at the stations and at the gravel pit, which is about one mile this side of Hamilton. At the stations deriations were necessary to get round the station houses, or to avoid other obstructions, and for a similar reason we avoided the gravel pit. On the line of posts on the eastern side of the C., H., and D. R. R. there are now three wires, which are from 12 inches to 18 inches apart. The poles are about twenty-one feet high above the ground, on an average. At stations and crossings they are made somewhat higher by strips nailed to the top of them. I think that these poles would, by adding cross arms, bear two or three additional wires; a thirty foot pole would bear ten wires easily.

ROB'T HINE.

Sworn to before me, and subscribed in my presence, this 30th day of May, 1865,

[N. SEAL.] JNO. KAW, *Notary Public, Ham. Co., O.*

Circuit court of U. S.

61 *Alfred De Lash.*

THE WESTERN UNION TELEGRAPH COMPANY *against* THE UNITED STATES TELEGRAPH COMPANY and another.

Alfred De Lash makes solemn oath and says, that for about three years he has been engaged in the construction of lines of magnetic telegraph. I am now working in the employment of Mr. Frank B. Smith, who has a contract on the work of building the line of the U. S. Telegraph Company, of Ohio, from Cincinnati to Dayton; I am foreman of the diggers; I commenced work with my gang, from six to eight men, on the western side of the bridge over the Miami river at Dayton. On Tuesday the 18th, I saw some work at Middletown; and on the 19th, began work at Dayton; I received my orders from James Delphin, the superintendent of Mr. Smith's work, as to the place where I was to have the holes dug. His orders to me were to place the holes outside of the holes already dug there by the Western Union line, between their line of holes and the railroad fence. To make our line uniform, I took a rope, to one end of which was attached a hook to hook on to the inside of the inner rail of the western track; that is, the narrow guage rail, and measured to the place directed. Mr. Dolphin afterwards took charge of the work himself, and I worked under him. He had a measured cord, which, I understood, was thirty-four feet long, having a hook on it in the same way. We worked with this line, the allowance for the width of the outer rail being made on the rope itself. At the end of the rope, the place for digging was marked either by a stake or by digging out the sod. Where the end of the rope extended beyond the limits of the railroad right of way, as marked on the draft of road as given to us, we came nearer to the rail so as to keep within the line of the right of way; we did
62 from thirty to forty miles, thirty poles to the mile. When we got this side of Hamilton, we found two different lines of poles standing, perhaps about three miles, nearly in the same line; one line had two cross arms on it, and the U. S. Telegraph Co., of Ohio, had on their poles only one cross arm. It is impossible for the two lines to work at that point, because they interfere with each other. On the 22d day of May, 1865, I assisted Mr. Jason S. Evans in measuring these poles near Hamilton, the result of which he can state. Throughout the part of the line, on which I worked, I thought it would be necessary to clean out the holes which we found along the road, which, I understood, had been dug by the Western Union line, to put the line up in workmanlike; I saw no workman except those of the United States Company of Ohio, along the line, from April 19th, to this time.

N. F. DE LASH.

Sworn to before me, and subscribed in my presence at Cincinnati, this 23d day of May, 1865.

[N. SEAL.] JNO. KAW, *Notary Public.*

David A. Van Valkenburgh.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE UNITED STATES TELEGRAPH COMPANY.

David A. Van Valkenburg makes solemn oath and says, I was foreman for Mr. Smith, whose affidavit has been read to me. Mr. Smith gave me the orders he swears to, and I saw them carried out according to his directions. I concur with him in his opinion as to the stringing of the wires; I have had charge of telegraph building gangs for two years; I have no doubt whatever that wires can be worked at even less than 18 inches apart, and worked successfully; I took particular pains to keep out of the way of the Western Union line holes; I worked with a measured rod to guide me, and kept as close possible to my orders to dig the holes 2½ feet from the outer
63 edge of the roadway; I think that, in the poles which I set, we did not come in the way of the Western Union line in more than six instances, and in three places there is no necessary interference, if the Western Union line arrange their insulation properly.

DAVID A. VAN VALKENBURGH.

Sworn to before me, and subscribed in my presence at Cincinnati, Ohio, this 12th day of June, 1865.

[N. SEAL.] H. F. BRASHEAR,
Notary Public, in and for Hamilton Co., Ohio.

James Dolphin.

STATE OF CONNECTICUT,
County of Hartford, ss:

HARTFORD, *June 8th, A. D.* 1865.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE UNITED STATES TELEGRAPH COMPANY.

Be it remembered, that on the 8th day of June, A. D. 1865, personally appeared James Dolphin, before the undersigned, Francis Fellows, jr., notary public, duly commissioned and sworn for the State of Connecticut, who, having been duly cautioned and sworn, deposes as follows: That he was in Dayton, Ohio, from the first day of February, 1865, to about the thirtieth of April, 1865; and that while there, on or about the 20th day of February, 1865, he noticed the gang of men beginning to dig the holes on the northwest side of the Cincinnati, Hamilton, and Dayton railroad for the new line of the Western Union Telegraph Company; there was a force of about thirty five men engaged; they began at Cincinnati and worked towards Dayton, digging the holes for about 1,800 poles, and continued digging for about twelve or fifteen days. Cannot tell the precise

number of days. Before any of these holes were dug, the poles of the United States Telegraph Company of Ohio, had been distributed at the stations along the railroad from Dayton to Glendale, and were lying in piles, so conspicuously that no one passing could fail to
64 see them. There were also poles distributed at the distance of fifty-nine paces apart, along the northwest side of the railroad for more than two miles south from Dayton, and at points where it was intended to erect them. That he, James Dolphin, had charge of the distributing of the poles, and was employed to take charge of the digging of the holes. That he afterwards dug the holes according to directions given him by Mr. John W. Kirk. His directions were to dig the holes two and a half feet from the outside edge of the right of way, which directions he complied with. That Mr. De Lash worked under his charge, and he gave him the same directions that Mr. Kirk gave him, and further deponent saith not.

JAMES DOLPHIN.

STATE OF CONNECTICUT,
County of Hartford, ss:

HARTFORD *June 8th, A. D.* 1865.

Sworn to before me, and subscribed in my presence at Hartford aforesaid, this 6th day of June, A. D. 1865.

In witness whereof, I have hereunto set my name and affixed my seal office.

[N. SEAL.] FRANCIS FELLOWES, JR.,
Notary Public.

[5-c. r'v. st'p.]

Duncan T. Bacon.

UNITED STATES TELEGRAPH COMPANY } *ats.* THE WESTERN UNION TELEGRAPH CO.

Duncan T. Bacon makes solemn oath and says, that he has been for about ten years engaged in telegraph operations as operator, manager, and superintendent of construction, and is familiar with all the practical workings of telegraph lines. For two years prior to March, 1863, he was in the employment of the government of the United States as superintendent of the construction of government military lines of telegraph, and as operator at barracks, and in the field under General Frement, Curtis, and Halleck. He says my attention has been called to the proper distances of wires
65 from each other; to the danger of wires becoming entangled, and to the present state of the line of the respondents. If the poles are properly planted in the ground, as nearly perpendicular as possible, and the wires are strung in a proper manner, snugly, and rather tight, the line will work well and look well if the wires are one foot a part; I have never heard of a telegraph pole breaking with the weight or strain of the wires; if the pole is set too shallow, or is badly put up, a single wire strung near the top is much more

likely to pull it over than one nearer the ground. For this reason a pole is ordinarily more secure that has several wires strung upon it; additional aid is derived to weaker poles by the support of the adjacent poles and the tension of the wires. The line from Buffalo to Albany, along the New York Central railroad, which is part of the Western Union line, had seven wires on the poles on parts of the line. From Syracuse eastward, there are now six or seven wires on the poles; they are strung on cross arms, and are from eighteen inches to two feet apart. Wires do become entangled by the action of the wind. The cause is very manifest in practice. It arises either from the wires being strung too loosely, which allows the wind to swing them back and forth, or from the poles being placed at too great distances each other, or from wires becoming broken either from the tension of the wires in winter, or the imperfection of the wires caused by the corrosion of the galvanizing process, or by external violence. If the poles are well placed, fifty-eight yards from each other, and the wires are properly strung, and the line otherwise well constructed with proper insulators, I think that
66 the wires would never become entangled, except in cases where one of the wires became broken off, or broke loose from the insulators. In all the cases where I have known of wires becoming entangled, it was attributable to defects in construction or materials, and not to the proximity of the wires to each other. The action of the wind alone operating on ordinarily good wires, on posts firm enough not to be swayed by the wind, will not break the line.

There is ample room on the western side of the Cincinnati, Hamilton, and Dayton railroad for the construction of several lines of telegraph, besides that of the respondents. The width of five feet is ample for the erection of the poles and the side arms. A line may be constructed with perfect safety to the railroad, if the end of the cross-arm is six feet from the outside rail. The dangers to be avoided are the risk of the falling of the cross-arm on the track, and the danger of the wire becoming loose, and knocking brakemen of the top of freight trains. I think an allowance of six feet from the rail sufficient for this purpose. On the railroad from New Paris to Richmond, Indiana, for a distance of about four or five miles, the poles of the two rival lines are, in many places, only two or three feet apart. The lines cross each other several times; they are so close together that it puzzles the repairers as they ride along on the cars to know their own line from the other one. These lines are strung on brackets, that is, pegs about eight inches long, driven obliquely into the poles. Each line has now two wires on it, and a third wire is being placed on one line; both lines are in working order. One line, I know, has been working a year, or about that; I had charge of it, and I never experienced any difficulty in working it. The line
67 of the respondents is now to-day a completed, working line from Cincinnati to Dayton. Messages are sent back and forth daily. The necessary arrangements for offices and other details will delay the opening of the line to the public generally for about two weeks. This line is the only direct line of the respondents connect-

ing with the lines, which work in connection with them to the west and northwest, and the principal connecting line to all the respondent's line eastward as far as Albany. There is no line in Cincinnati competing with the complainants' line, except the respondents. All the business of the city of Cincinnati, coming to the respondents to and from Dayton, Indianapolis, St. Louis, Chicago, Milwaukee, Cleveland, Toledo, Detroit, Buffalo, Rochester, Syracuse, Albany, the oil region about Meadville, and all intermediate points, will pass over this line. The value of the lines of the respondents beyond Dayton will be greatly enhanced by the use of this connection to Dayton. In such towns as Springfield, Urbana, Mansfield, Akron, and Columbus, Ohio, the respondents are daily compelled to refuse business, because they have no office opened in Cincinnati. These offices and like offices, which either do not pay expenses, or barely do so, would, by this connection, soon do a paying business, and the public would have the benefit of competing lines. I know, from conversation with men of business from various parts of the State, and from the reports of telegraph operators made to me, that a general anxiety exists to have this competition in operation. I know that the same feeling exists among business men in Cincinnati.

DUNCAN T. BACON.

Sworn to before me and subscribed in my presence at Cincinnati this 17th day of June, 1865.

68 [N. SEAL.] JNO. KAW,
Notary Public, Ham. Co., O.

Company certificate.

And afterwards to wit, on the twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, came the complainants by their counsel, and filed a certain company certificate herein, which is in the words and figures following, to wit:

The New York & Mississippi Valley Printing Telegraph Company.

We, whose names and seals are hereunto affixed, do certify, as follows: First. That we have formed a company for telegraphic purposes, with a view to an incorporation under the act of the legislature of the State of New York, entitled "An act to provide for the incorporation of telegraph companies," passed April 12, 1848.

Second. That the name by which the said company is to be distinguished, and which is to used in carrying on its operations is "The New York & Mississippi Valley Printing Telegraph Company."

Third. That the object of said company is to construct and use a line of telegraph communication from the city of Buffalo, along the south side of Lake Erie to the State of Pennsylvania, with a right, subject to the laws of the several States which it may intersect, to construct, own, and operate a line of telegraph, extending from the western terminus of the line above described, through the intermediate States, to the city of St. Louis, in the State of Missouri, touching at Cleveland, Columbus, Cincinnati, and such other points as may be deemed advisable.

Fourth. That the capital stock of said company is three hundred and sixty thousand dollars, to be divided into thirty-six hundred shares of one hundred dollars each, with power to increase the same in the manner prescribed in the articles of association and in-
69 corporation hereto attached.

Fifth. That the names and places of residence of the shareholders, and the number of shares held by each respectively are as follows: Samuel L. Selden, of Rochester, N. Y., 900 shares; Freeman M. Edson, of Rochester, N. Y., 900 shares; Isaac Butts, of Rochester, N. Y., 900 shares; Sanford J. Smith, of St. Louis, Missouri, 900 shares, making the aggregate of 3,600 shares.

Sixth. That the company shall commence on the first day of April, eighteen hundred and fifty-one, and shall terminate on the first day of April, nineteen hundred and fifty-one.

Seventh. That the affairs of the company are to be managed under and according to the annexed articles of association.

In witness whereof, we have hereunto set our hands and seals, on the day of the year first above written.

SAMUEL L. SELDON. [L. S.]
F. M. EDSON. [L. S.]
ISAAC BUTTS. [L. S.]
SANFORD J. SMITH. [L. S.]

STATE OF NEW YORK, *Monroe County, ss:*

On this second day of April, 1851, before me, the subscriber, came Samuel L. Selden, Freeman M. Edson, Isaac Butts, and Sanford J. Smith, to me known to be the persons described in, and who executed the foregoing certificate, and severally acknowledged that they executed the same.

A. E. PARDEE, *Com'r of Deeds.*

New York and Mississippi Valley Telegraph Company.

Articles of association and incorporation.

Whereas, Sanford J. Smith and Isaac Butts, under and by virtue of a contract between them of the one part, and Freeman M. Edson and Samuel L. Selden of the other part, are entitled to the exclusive right of establishing and constructing a line of telegraph, to be operated by the instrument known and patented under the name of "House's Printing Telegraph," between Buffalo, in the State
70 of New York and St. Louis, in the State of Missouri; and whereas the said Sanford J. Smith and Isaac Butts are now engaged in constructing a line of telegraph between the places and for the purpose above mentioned: Now, therefore, for the purpose of completing, owning, and operating said telegraph line, the subscribers hereto have agreed, and do hereby agree, to form an incorporated association or company, pursuant to the act of the legislature of the State of New York, entitled "An act to provide for the incorporation and regulation of telegraph companies," passed April 12, 1848, upon the terms and conditions following, to wit:

Art. 1. The name of the said company shall be "The New York & Mississippi Valley Printing Telegraph Company."

Art. 2. The route of the said telegraph line shall pass through this State, from the city of Buffalo, to the State of Pennsylvania, along the southside of Lake Erie.

Art. 3. This company shall own and operate the residue of the said telegraph line from the boundary of the State of New York, through the several States, to the city of St. Louis, touching at Cleveland, Columbus, and Cincinnati; and thence to St. Louis by such route as shall be designated by the directors; to be constructed by the said Sanford J. Smith and Isaac Butts, under and by virtue of authority from the said States respectively, or from the persons, whose lands the said line may cross.

Art. 4. The capital stock of said company shall be three hundred and sixty thousand dollars, to be divided into 3,600 shares of one hundred dollars each, but the amount of said stock may be increased in the manner hereinafter prescribed.

Art. 5. The persons, whose names are hereto subscribed
71 are the shareholders of said capital stock, and their places of residence, and the number of shares held by each are set opposite to their names respectively.

Art. 6. This company shall commence on the first day of April, one thousand eight hundred and fifty-one, and terminate on the first day of April, one thousand nine hundred and fifty-one.

Art. 7. This company is to have the exclusive right, subject to the rights of the aforesaid Smith and Butts, of constructing and using said printing telegraph, upon the line aforesaid, under letters patent issued to Royal E. House, as the inventor thereof, during the life of said patent and of any renewals thereof, and the right of constructing and using House's insulators, and of all improvements made, or to be made by said Royal E. House in the printing telegraph, or in the apparatus or machinery connected therewith. The assent of the patentees to these articles is to be obtained, and properly attested prior to the payment of any part of the subscriptions to the stock. As soon as practicable after twenty-five per cent. of the cost of building said line shall have been paid by the subscribers to the said stock, the rights above specified shall be transferred to the company by deed or other good and sufficient conveyance.

Art. 8. The one-half of said capital stock, to wit, one hundred and eighty thousand dollars, shall be appropriated in payment for the exclusive right of constructing and using the said printing telegraph upon the line aforesaid, under the letters patent issued to Royal E. House, as the inventor thereof, during the life of said patent, and of any renewals thereof; the other half shall be devoted to the object of constructing, completing, and putting in operation the said
72 line.

Art. 9. The line is to be constructed by Sanford J. Smith and Isaac Butts above named, who are to receive therefor the sum of one hundred and eighty thousand dollars, to be paid to them out of the moneys subscribed to the capital stock of said company, and pro-

vided the full amount shall not be realized from subscription, they shall be entitled to receive, and shall accept the balance in stock.

Art. 10. The affairs of this company shall be managed by a board of nineteen directors, who shall choose a president and vice-president from their number. The board shall also have power to appoint a treasurer and secretary, who shall hold their offices respectively, during the pleasure of the board, or they may appoint one person to act both as secretary and treasurer. They shall have power to fix the salaries of the president, and of all the other officers and agents of the company, and to adopt such resolutions, and by-laws, not conflicting with any provisions of these articles, as they may think proper, for the regulation of the business of the company. A majority of the directors, including the president or vice-president, shall constitute a quorum to do business. Special meetings of the board may be called by the president as often as occasion may require. They shall hold regular quarterly meetings on the third Tuesdays of January, April, July, and October respectively of each year, and may declare dividends at such meetings, or as often as they may deem expedient. They may also designate three of their number, who, with the president and treasurer, shall constitute an executive committee, who shall, for the time being, have charge of the affairs and business of the company, subject to the control of the board.

73 Art. 11. The directors shall be chosen by the stockholders at their annual meeting, and shall hold their offices for one year, and until others are chosen. No person shall be a director unless he is a stockholder in the company. Any vacancy in the board of directors may be filled for the residue of the year by the remaining directors. The stockholders shall at the same time choose three persons to act as inspectors, to preside at the next succeeding annual election. Until the first annual election of directors, or until other persons are appointed in their places, as hereinafter provided, the following persons shall compose the board of directors, to wit: Henry S. Potter, Addison Gardiner, Freeman Clarke, Isaac R. Elwood, George W. Burbank, Joseph Hall, George H. Mumford, E. Darwin Smith, Isaac Hills, Samuel Medary, Joseph Medbery, James Chappell, Rufus Keeler, Royal E. House, Freeman M. Edson, Samuel L. Selden, Isaac Butts, Sanford J. Smith, and Hiram Sibley. In case any of the aforesaid persons shall not become stockholders of this company within sixty days from the organization thereof, they shall cease to be directors, and the remaining directors may supply the vacancy until the said election.

Art. 12. The president shall preside at all meetings of the directors, and also of the stockholders, except during the election of directors. He shall draw all drafts upon the treasury for the disbursements of the company, according to the rules prescribed by the board. He shall sign all certificates of stock, and shall be ex-officio president of the executive committee. In the absence or inability of of the president, the vice-president shall act in his stead, and possess all the powers and perform all the duties of the president.

Art. 13. The secretary shall keep the minutes of the pro-

74 ceedings of all the meetings of stockholders, and of the directors, and of the executive committee, which, at all reasonable hours, shall be open to the inspection of any stockholder; he shall countersign all certificates of stock; he shall keep the general accounts of the company, as well as a record of all issues and transfers of stock; and shall perform all such other duties as may be imposed upon him by resolutions or by-laws adopted by the board of directors.

Art. 14. The treasurer shall receive all monies collected, pay all drafts and dividends made pursuant to the rules and regulations of the board of directors, and shall keep a faithful account of his receipts and disbursements; and at each quarterly meeting of the directors, and oftener if required, he shall exhibit to them a true transcript thereof. He shall also, when required, give security to the company, in such form and to such amount as the board of board of directors may prescribe, for the faithful discharge of his duties. While the line is in progress of construction, the treasurer shall also receive and have the custody of the moneys subscribed for building said line, which subscriptions shall be payable to his order; and he shall pay to the said Sanford J. Smith and Isaac Butts, the moneys so received by him, under the direction of the executive committee as fast as the same shall be required for the construction of the said line; but the amount so to be paid shall not, at any time, exceed the value of the work actually done and materials delivered or procured; which materials, so delivered or procured, shall thereupon become and be the property of the company. The board of directors or executive committee may exact from the said Smith and Butts adequate security for the faith-

75 ful appropriation of all moneys paid to them for the purposes herein specified.

Art. 15. The Sanford J. Smith and Isaac Butts are to construct said line from the city of Buffalo to the city of St. Louis, according to the contract hereinbefore mentioned, in the manner following, viz: There shall be at least thirty posts to the mile, which shall be not less than thirty feet long; they shall also be twenty-seven inches or more in circumference, four and a half feet from the butt, and twelve inches in circumference at the top, and they shall be set into the ground five feet. The posts shall be of the best timber, reference being had to durability, which is readily accessible on the route through which the line is to pass. Upon these posts shall be stretched two conductors of single iron wire of the best quality, one of which shall weigh not less than six hundred pounds, and the other not less than four hundred and fifty pounds to the mile. The insulation used for the upper line shall be that recently invented by the said Royal E. House, consisting of a heavy glass insulator, cast or moulded, with a screw to secure it at the top of the poles, and inclosed in a cast iron cap, to which it is also secured with a screw; the side insulator shall be such as shall be approved by the said House. One of House's printing telegraph instruments is to be furnished by said Smith and Butts for each of the following places, to wit: Erie, Cleveland, Columbus, Dayton, Indianapolis, Terre Haute,

Louisville, and two each at Buffalo, Cincinnati, and St. Louis: provided the line shall intersect each of those places. But in no case shall the number of telegraph instruments be less than that herein specified; provided that so many be required at those and other
76 places upon the completion of the line. Suitable offices shall be procured at the several stations on the line on which the machines shall be set up in a proper manner for use; but the rent and all expense of fitting up said offices, except furnishing and setting up the instruments, and connecting them properly with the line, shall be borne by the company. The whole line is to be put in complete working order by the said Smith and Butts, according to the aforesaid contract.

Art. 16. Whenever the first payment on stock is made, the treasurer shall give a scrip certificate of stock, stating the amount of each share, the number of shares which the holder thereof is entitled to, the amount paid thereon, and that the same is only transferable on the books of the company, and on the surrender of such certificate.

Art. 15. The board of directors shall not be authorized to issue the portion of the stock which is appropriated to be paid or given for the rights specified in article seventh, until such right are fully transferred, conveyed, or assigned to this company in such manner as to vest the same in this company, according to the true intent and meaning of said article.

Art. 17. Every part and portion of the aforesaid telegraph line, as fast as the same shall be constructed, together with all posts, wires, insulators, or other materials procured for said line, shall become and be the full and complete property of this company; and every member of this company shall be bound to execute to the corporation such conveyance and assignment as shall be necessary to vest the said corporation with all the rights of property aforesaid, and all the rights of constructing and using, on the said line,
77 the aforesaid printing telegraph and insulators, and all improvements thereof, and all renewals of the same, as specified in the aforesaid seventh article.

Art. 18. The first annual meeting of the stockholders shall be held at the Mansion House, in the city of Buffalo, on the first Tuesday of April, in the year 1852, or at some earlier day to be appointed by the executive committee, in case the line shall be in working order through its entire length prior to January 1, 1852, of which earlier meeting the same notice is to be given as for a special meeting of the stockholders. The subsequent annual meetings shall be held on the same day in each year.

Art. 19. Special meetings of the stockholders shall be called by the president at any time, on the written request of the persons holding or entitled to one-third of the capital stock of this company. Such request shall specifically state the object or objects of the desired meeting. The president shall appoint such meeting, and the secretary shall give a written notice thereof, stating the object of the proposed meeting, which notice shall be sent by mail, at least thirty days prior to the time of such meeting, addressed to the

several stockholders at their respective places of residence, as they appear on the books of the company; but no such meeting shall be held to be irregular or invalid for want of due notice to all the stockholders, unless the omission to give such notice was wilful and fraudulent.

Art. 20. The board of directors, with the consent of two-thirds of all the members thereof, whose names are to be entered in the minutes of their proceedings, may merge or unite this line with any other telegraph line or lines which may be authorized to use
78 House's printing telegraph, on such terms as shall appear just and equitable; and the stockholders in this company shall be entitled to at least the same amount of stock in the said incorporated company to which this company shall be united, as they were respectively entitled to in this company. The said directors, with the like consent, may also purchase for the company any line, or part of a line of telegraph already constructed, to form a part of this line, if in their judgment such purchase will be for the benefit of this company; and in case of any such purchase or purchases, so much of the cost thereof as would be equal to the cost of the same extent of new structure shall be borne by the said Sanford J. Smith and Isaac Butts, and the balance, if any, shall be chargeable to the association. The said directors may also lease for the company any line or part of a line of telegraph, if, in their judgment, such leasing shall be for the benefit of this company.

Art. 21. Whenever the president shall receive notice from the Sanford J. Smith and Isaac Butts that the line from the city of Buffalo to the city of St. Louis is completed and ready for operation, he shall call a meeting of directors for the purpose of stating such measures in relation to the inspection of the said line, and the acceptance thereof by this company, as they may deem advisable, in the proceedings of which meeting neither the said Sanford J. Smith nor Isaac Butts shall have any voice; or, the directors, at their option, may at any time accept any portion or section of such line as may be in working order; and from the date of such acceptance, such portion or section of line shall be operated by and for the benefit of the corporation; and all liability of said Smith and Butts, as
79 regards any particular section or portion of line, shall be terminated by the acceptance thereof, as herein provided for. But, with the restrictions herein specified, the said Sanford J. Smith and Isaac Butts shall be liable for all defects and deficiences of said line until it is duly accepted by the directors.

Art. 22. The subscriptions to this stock shall be payable in four installments of twenty-five per cent. each. The first installment shall be payable on demand, or within thirty days thereafter. The others shall be payable at the call of the executive committee, and the treasurer shall give a written notice of such call, which shall be deposited in the post office at least thirty days prior to the time of payment, and addressed to the several stockholders at their respective places of residence, as they appear on the books of the company. In case any subscriber shall fail to pay the amount thus called for at

the time specified in such notice, he shall forfeit his stock and all previous payments thereon, or remain liable on his subscription at the option of the board of directors; all payments to be made to the treasurer of the company, or to his order for the benefit of this company.

Art. 23. Whenever the person holding one-fourth of the stock shall present a written request to the president for an increase or decrease of the number of directors, at least two months before the annual meeting of the stockholders, he shall direct the secretary to give thirty days notice through the post office to each stockholder, that the question of an increase or decrease of the number of directors will be presented at such annual meeting; at which time the number of directors may be increased or decreased by a ma-
80 jority of the votes given thereon, but the number shall not, at any time, be less than that fixed by these articles.

Art. 24. Whenever the board of directors, by a vote of a majority of all the members thereof, shall determine that it is for the interest of the company to extend its business by adding to the number of wires or conductors upon the line aforesaid, or by constructing any other line or lines to operate in connec ion therewith, (in case the patent rights can be obtained from the proprietors thereof,) they shall enter their determination upon the minutes at large; and all such additions shall be made by an increase of the capital stock, and in no other manner. The board shall fix the amount of increase necessary for the purpose aforesaid. They shall cause thirty days' notice to be sent by mail, addressed to each of the stockholders, at his place of residence, of a meeting of the stockholders, at which the question of increasing the stock, specifying the object thereof, is to be submitted. If, at such meeting, the persons owning two-thirds of the stock shall *shall* vote in favor of such increase, or if within two months thereafter the persons holding two-thirds of said stock shall give a written assent thereto, the directors shall be authorized to increase the stock accordingly. No meeting shal be held irregular or invalid for want of due notice to all the stockholders, unless the omission to give such notice was wilful and fraudulent.

Art. 25. These articles shall be and form a part of the by-laws and regulations of this corporation until the same shall be altered as herein provided; and the said directors shall provide for the distribution of the capital stock of the said corporate body among
81 the persons entitled thereto, in proportion to their respective rights and shares therein.

Art. 26. Every person subscribing to these articles shall designate his place of residence; and every person becoming the assignee of any stock or share shall, in like manner, designate the place of his residence, to which places all notices required by these articles may be sent.

Art. 27. At all meetings of the stockholders each stockholder shall be entitled to one vote on each share of stock appearing, by the books of this company, to have belonged to him for at least thirty days prior to such meeting; but no one stockholder shall give more

than one-fourth part of the aggregate vote of the company. Any stockholder may vote either in person or by proxy.

Art. 28. Every person who shall take stock in this company by subscription, transfer, or otherwise, shall be deemed to assent to the foregoing articles, but the same may be altered, at any annual meeting of the stockholders, by the vote of the persons holding a majority of the stock, except the article in relation to the increase of stock, which shall not be altered without the vote of the persons holding two-thirds of said capital stock; and excepting, also, all those articles which embrace some matter of contract between the company and the patentees, or contractors for building the line, which last articles shall be and remain unalterable, without the consent of each and every party thereto.

Art. 29. The board of directors shall cause certificates of the stock of this company to be issued to the several parties entitled thereto, in proportion to their respective rights; and for the purpose of enabling them to do so, duplicate copies of all contracts, by virtue of which any person shall be entitled to any of the said stock,
82 shall be filed with this company. But the portion of stock representing the patentee interest shall be issued to Samu'l L. Seldon and Freeman M. Edson in trust, to be by them distributed to the respective parties entitled thereto. (Correction.—For George W. Burbank, in the list of directors, read Gideon W. Burbank.)

STATE OF NEW YORK,
Office of the Secretary of State.

I have compared the preceding with the original certificate of incorporation of the New York and Mississippi Valley Printing Telegraph Company, with acknowledgment thereto annexed, filed in this office on the eighth day of April, 1851, and hereby certify the same to be a correct transcript therefrom, and of the whole of said original.

Witness my hand and seal of office of the secretary of state, at the city of Albany, this fourteenth day of June, one thousand eight hundred and sixty-five.

[SEAL.] ERASTUS CLARK,
Deputy Secretary of State.

Chap. 97. An act to change the name of the New York and Mississippi Valley Printing Telegraph Company, passed April 4th, 1856.

The people of the State of New York, represented in senate and assembly, do enact as follows:

Section 1. The name of the "New York and Mississippi Valley Printing Telegraph Company," a body corporate, organized under the general laws of this State, is hereby changed to "The Western Union Telegraph Company;" and the said company shall have the right to continue to hold and manage the property and affairs of the said telegraph company as a corporation, by or under the name or style of "The Western Union Telegraph Company." But nothing herein shall be construed to affect any action now pending
83 in favor of or against the said company; and in case any

action shall be hereafter commenced against the said company, in this State or elsewhere, by any person or party not knowing the change of the corporate name of said company, it shall not be authorized to plead a misnomer, but shall answer or plead to the merits of the action, stating in such answer the true name of said corporation; and such action shall proceed against it in either name, according to the practice of the court in which such action shall be pending; and any judgment recovered therein shall be as valid as if the action had been commenced and conducted against the said company by its true name.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK,
Office of Secretary of State.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this this fourteenth day of June, in the year one thousand eight hundred and sixty-five.

[SEAL.] CHAUNCEY M. DEPEW,
Secretary of State.

UNITED STATES OF AMERICA:

By Reuben E. Fenton, governor of the State of New York.

It is hereby certified, that the foregoing copy has been compared with the original articles of association, on file in the office of the secretary of state of the State of New York, and that the copy of the law attached has been compared with the original law on file in the office of the secretary of state of the State of New York, and that they are correct transcripts therefrom, and of the whole of said originals, and that the signatures to the certificates attached
84 thereto are genuine, and that the seal attached thereto is the seal of the office of the secretary of state of the State of New York.

In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] R. E. FENTON.

Passed the secretary's office the 14th day of June, 1865.

ERASTUS CLARK,
Deputy Secretary of State.

And afterwards, to wit, on the twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, an entry was made upon the journal of said court, which said entry is in the words and figures following, to wit:

Journal entry.

THE WESTERN UNION TELEGRAPH Company,
vs.
THE UNITED STATES TELEGRAPH Company, of Ohio, *et al.*

Mo. for preliminary injunction.—Chancery.

The said plaintiffs and the said defendant, the United States Telegraph Company, of Ohio, appeared before the court, on the nineteenth instant, and commenced the hearing of said motion, and the same not being concluded was laid over until this morning; and thereupon, at the suggestion of the honorable the district judge, that the further hearing of the motion at this time would interfere with the criminal cases set for trial, and that it would be proper to lay the said motion over to another day, which might enable the honorable the presiding judge of this court to hear the said motion, it was, thereupon, by consent of the counsel of both parties, so postponed. And it appearing that the said United States Telegraph Company, of Ohio, is about to put the said line erected by it in operation, on motion of plaintiffs, it is ordered that said United States Telegraph Company, of Ohio, do keep an account of its receipts in said
85 business on said line, to abide the further order of the court.

And afterwards, to wit, on the fourth day of October, in the year of our Lord one thousand eight hundred and sixty-five, an exhibit was filed herein, which is in the words and figures following, to wit:

Exhibit.—Application to condemn line.

Probate court of Hamilton county.

THE UNITED STATES TELEGRAPH Company, of Ohio, plaintiff,
against
THE CINCINNATI, HAMILTON, AND Dayton Railroad Company, defendants.

The United States Telegraph Company, of Ohio, a corporation created and duly organized under the laws of Ohio, state to the court that they are authorized by their charter to construct a line of magnetic telegraph from any convenient point in the city of Cincinnati, to any convenient point in the city of Dayton, and that they have located their line along and upon the right of way possessed by the Cincinnati, Hamilton, and Dayton railroad, on the western side of the west track of said railroad, but that the plaintiffs are unable to agree with the Cincinnati, Hamilton, and Dayton Railroad Company, the owners of said right of way, upon the compensation to be paid therefor. The plaintiffs seek to appropriate so much of said right

of way of the Cincinnati, Hamilton, and Dayton Railroad Company, west of the west track of said company's railroad, as shall be necessary to erect thereon telegraph poles, at the distance of one hundred and fifty feet from each other, or at such longer or shorter distance from each other as the nature of the ground and intervening obstacles may render necessary, from Cincinnati, beginning at the
86 depot of the Cincinnati, Hamilton, and Dayton railroad on Fifth street, in Cincinnati, to the depot of the same company in Dayton, and the work intended to be constructed thereupon is said telegraph poles and telegraph wires at a distance of not less than fifteen feet from the surface of the earth; and the plaintiffs also seek to appropriate the right of access, ingress, egress, and regress over the right of way above stated, for the purpose of erecting said poles and wires, and of keeping them from time to time, as may be required, in suitable repair. The plaintiffs, therefore, pray that the court may order that an enquiry be made of the damages which the said Cincinnati, Hamilton, and Dayton railroad may sustain in consequence of the appropriation sought for, and that upon payment of the same, and the costs, the property above mentioned may be held by the plaintiffs for the purposes of erecting and maintaining thereon a line of magnetic telegraph.

M. E. CURWEN,
Their Attorney.

[50 c. stp.]

THE STATE OF OHIO, *Hamilton County, ss:*

Probate court.

To Richard Calvin, esq., sheriff of Hamilton county, greeting:

You are hereby commanded to notify the Cincinnati, Hamilton and Dayton Railroad Company, that the United States Telegraph Company, of Ohio, have filed in the office of our said court their statement for the appropriation for their use of certain real estate, property, and rights, of which the said Cincinnati, Hamilton and Dayton Railroad Company are the owners, for the purpose of constructng thereon a line of magnetic telegraph, and maintaining the same.

A more particular description of said real estates sought to be
87 appropriated by said United States Telegraph Co. of Ohio, is contained in their statement now on file in the office of our said court. And you are further commanded to notify the said Cincinnati, Hamilton and Dayton Railroad Company that a venire facias has been issued to you, as sheriff of our said county, requiring you to summon a jury, according to the statute in such cases, to appear before the honorable Edward Woodruff, judge of the probate court within and for Hamilton county, Ohio, at the court-house in Cincinnati, on the 31st day of January, A. D. 1865, at 10 o'clock a. m., then and there to be empanneled and sworn, for the purpose of estimating and valuing the amount of compensation the said Cincinnati, Hamilton and Dayton Railroad Company shall be entitled to receive by reason of such appropriation. You are, therefore, hereby commanded to summon the

said Cincinnati, Hamilton and Dayton Railroad Company to be and appear before our said probate court on the said 31st day of January, A. D. 1865, at 10 o'clock a. m., then and there to prove the amount of compensation they are entitled to receive by reason of such appropriation; and have you then and there this writ.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 26th day of Jan., A. D. 1865.

EDW'D WOODRUFF, [SEAL.]
Probate Judge.

Service of the within writ upon the defendant is hereby acknowledged and waive the issuing and service of a venire for a jury.

STANLEY MATTHEWS,
Att'y for C. H. and D. R. R. Co.

1865, *Jan'y 27th.*

Service of the within notice acknowledged by Stanley Matthews, attorney for within-named defendants.

R. CALVIN, *Sh'ff.*
Per I. L. THOMPSON, *Dpty.*

88 Sheriff's fees, 60 c.

Probate court of Hamilton county.

THE UNITED STATES TELEGRAPH COMPANY, of Ohio, plaintiffs,
against
THE CINCINNATI, HAMILTON AND DAYTON Railroad Company, Defendants.

The plaintiffs applied for leave to amend their petition by striking out, in the sixth and seventh lines of the second page the words "to the depot of the same company in Dayton," and inserting in place thereot the words "to the northern line of Hamilton county," and leave was granted and the amendment filed. And thereupon, the defendants moved the court to dismiss the proceedings for want of power in the applicant to appropriate private property for its use; which motion having been argued by counsel, the court now grant, and dismiss the proceedings at the cost of the applicant. To which order of dismissal the plaintiff excepts.

THE STATE OF OHIO, *Hamilton county, ss:*

Probate court.

I, Edw'd Woodruff, sole judge and ex-officio clerk of the probate court, within and for the county aforesaid, do hereby certify the foregoing to be true copies of the statement of the United States Telegraph Company, of Ohio, as filed in our said court on the 26th day of Jan'y, A. D. 1865, and also of the notice as issued to the defendant on the same day, and return of the sheriff to the same, in the

matter of the United States Telegraph Company, of Ohio *vs.* Cincinnati, Hamilton and Dayton Railroad Company; and also of the order dismissing cause as made, March 7th, 1865, as the same appear from the records and files of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 31st day of Jan'y, A. D. 1865.

[SEAL.]

EDW'D WOODRUFF,
Probate Judge and Ex-officio Clerk.
By ALBERT PADDACK,
Deputy Clerk.

[5-cent stamp.]

89 And afterwards to wit, on the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-five, a certain exhibit was filed herein which is in the words and figures following, to wit:

Act of leg. N. Y., 1848.

Chapt. 265.—An act to provide for the incorporation and regulation of telegraph companies. Passed April 12, 1848.

The people of the State of New York, represented in senate and assembly, do enact as follows:

§ 1. Any number of persons may associate for the purpose of constructing a line of wires of telegraph through this State, or from and to any point within this State, upon such terms and conditions, and subject to the liabilities prescribed in this act.

§ 2. Such persons, under their hands and seal, shall make a certificate which shall specify, 1st. The name assumed to distinguish such association, and to be used in its dealings, and by which it may sue and be sued; 2d. The general route of the line of telegraph, designating the points to be connected; 3d. The capital stock of such association, and the number of shares into which the stock shall be divided; 4th. The names and places of residence of the shareholders, and the number of shares held by each of them respectively; 5th. The period at which such association shall commence and terminate; which certificate shall be proved or acknowledged, and recorded in the office of the clerk of the county where any office of such association shall be established, and a copy thereof filed in the office of the secretary of state. Such acknowledgment may be taken by any officer authorized to take the acknowledgment of deeds of real estate at the place where such acknowledgment is taken.

§ 3. Upon complying with the provisions of the last pre-
90 ceding section, such association shall be, and hereby is declared to be a body corporate, by the name so as aforesaid to be designated in said certificate; and a copy of said certificate duly certified by the clerk of the county, where the same is filed and recorded, or by the secretary of state, may be used as evidence in all courts and places, for and against any such association.

§ 4. Such association shall have power to purchase, receive and hold, and convey such real estate, and such only, as may be necessary for the convenient transaction of the business, and for effectually carrying on the operations of such association, and may appoint such directors, officers, and agents, and make such prudential rules, regulations and by-laws, as may be necessary in the transaction of their business, not inconsistent with the laws of this State, or of the United States.

§ 5. Such association is authorized to construct lines of telegraph along and upon any of the public roads and highways, or across any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers or abutments, for sustaining the cords or wires of such lines; provided the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the construction of any bridge across any of the waters of this State.

§ 6. If any persons over whose lands said lines shall pass, upon which said posts, piers or abutments shall be placed, shall consider himself aggrieved or damaged thereby, it shall be the duty of the county court of the county within which said lands are, on the
91 application of such person, and on notice to said association, (to be served on the president or any director,) to appoint five discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act; and it shall be the duty of said commissioners, or a majority of them, to make a just and equitable appraisal of all the loss or damage sustained by said applicant, by reason of said lines, posts, piers or abutments; duplicates of which said appraisement shall be reduced to writing and signed by said commissioners, or a majority of them; one copy shall be delivered to the applicant, and the other to the president, or any director or officer of said association or corporation, on demand; and in case any damage shall be adjudged to said applicant, the association or corporation shall pay the amount thereof, with costs of said appraisal, said costs to be liquidated and ascertained in said award; and said commissioners shall receive, for their services, two dollars for each day they are actually employed in making said appraisement.

§ 7. Any person who shall unlawfully and intentionally injure, molest or destroy any of said lines, posts, piers or abutments, or the materials or property belonging thereto, shall on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year, or both, at the discretion of the court before which the conviction shall be had.

§ 8. It shall be lawful for any association of persons organized under this act, by their articles of asociation, to provide
92 for an increase of their capital, and of the number of the association.

§ 9. Any association or company now organized and using Morse's telegraph may organize as a corporation under this act on filing in the office of the secretary of state a resolution of its board of directors signed and certified by the officers of the company, of its desire so to organize, and upon publishing notices to this effect in some one newspaper in the city of New York, and the city of Buffalo, and the city of Albany, three months previous to such organization, provided that two-fifths of the owners of the stock of said company or association do not dissent therefrom; provided, that any stock or shareholder in any such association or company, may, on giving thirty days' notice to the officers, or any of them, of such association or company, at any time before such organization, and thereupon such stock or shareholder shall be entitled to receive from such association or company the full value of his shares or stock in such association or company.

§ 10. The stockholders of every association organized in pursuance of this act, shall be jointly and severally personally liable for the payment of all debts and demands against such association, which shall be contracted or which shall be or shall become due during the time of their holding such stock, but such liability of any stockholder shall not exceed twenty-five per cent. in amount, the amount of stock held by him, and no stockholder shall be proceeded against for the collection of any debt or demand against such association, until judgment thereon shall have been obtained against the association, and an execution on such judgment shall have been returned unsatisfied in whole or in part, or unless such association shall be dissolved.

9 § 11. It shall be the duty of the owner, or the association owning any telegraph line doing business within this State, to receive despatches from and for other telegraph lines and associations, and from and for any individual, and on payment of their usual charges for individuals for transmitting despatches, as established by the rules and regulations of such telegraph line, to transmit the same with impartiality and good faith, under the penalty of one hundred dollars for every neglect or refusal so to do, to be recovered with costs of suit, in the name and for the benefit of the person or persons sending, or desiring to send such despatch.

§ 12. It shall likewise be the duty of every such owner or association to transmit all despatches in the order in which they are received under the like penalty of one hundred dollars to be recovered with costs of suit, by the person or persons whose despatch is postponed out of its order, as herein presribed: Provided, however, that arrangements may be made with the proprietors or publishers of newspapers for the transmission, for the purpose of publication, of intelligence of general and public interest, out of its regular order.

§ 13. This act shall take effect immediately.

STATE OF NEW YORK,
Office of the Secretary of State.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this 10th day of October, in the year one thousand eight hundred and sixty-five.

[SEAL.] CHAUNCEY M. DEPEW,
Secretary of State.

And afterwards, to wit, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five, 94 came the complainants, by their counsel, and file their replication herein, which is in the words and figures following, to wit:

Replication.

In the United States circuit court for southern district of Ohio.

THE WESTERN UNION TELEGRAPH COMPANY
v.
THE UNITED STATES TELEGRAPH COMPANY of Ohio, *et al.* } In chancery.

The complainant, for replication to the answer of the defendant, the United States Telegraph Company of Ohio, says, that the matters set forth in the bill are true and sufficient in law to be answered unto, and that the matter set forth in said answer contrary thereto, are untrue and insufficient to be replied unto; all which the complainant is and will be ready to prove as the court may direct.

H. STANBERY,
E. A. FERGUSON,
Sol'rs for Comp'ts.

And afterwards, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and sixty-five, a certain exhibit was filed herein, which is in the words and figures following, to wit:

Copy of organization U. S. Tel. Co.

The undersigned associating to form a company for the purpose of constructing lines of magnetic telegraph do, unedr their hands and seals make this certificate, for the purpose of becoming a body corporate, with all the rights, privileges, and powers conferred by the act of the legislature of Ohio, entitled an act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1, 1852, and the acts amendatory thereto, and subject to all the restrictions of said acts.

First. The name assumed by said company, and by which it shall be known, is "The United States Telegraph Company of Ohio."

Second. The termini of the lines, and the counties through which the same shall pass, are as follows:

95 No. 1.—A line of magnetic telegraph to extend from Cincinnati to the State line of Michigan, at a point where the Detroit, Monroe, and Toledo railroad crosses said State line; which line of magnetic telegraph will pass through the counties of Hamilton, Butler, Warren, Montgomery, Miami, Shelby, Auglaize, Allen, Putnam, Henry, Wood, and Lucas.

No. 2.—A line of magnetic telegraph to extend from Hamilton, in the county of Butler, to the State line of Indiana, where the Eaton and Hamilton railroad crosses the State line; which line of magnetic telegraph will pass through the counties of Butler and Preble.

No. 3.—A line of magnetic telegraph to extend from Hamilton, in the county of Butler, where the Cincinnati and Indianapolis Junction railroad crosses said line; which line of magnetic telegraph will pass through the counties of Butler and Preble.

No. 4.—A line of magnetic telegraph to extend from Dayton to Sandusky City, which will pass through the counties of Montgomery, Greene, Clark, Champaign, Logan, Hardin, Wyandott, Seneca, Sandusky, and Erie.

No. 5.—A line of magnetic telegraph to extend from Dayton to a point where the Atlantic and Great Western railroad crosses the State line of Pennsylvania, which line of magnetic telegraph will pass through the counties of Montgomery, Clark, Champaign, Logan, Union, Marion, Morrow, Crawford, Richland, Ashland, Wayne, Medina, Summit, Stark, Portage, and Trumbull.

No. 6.—A line of magnetic telegraph to extend from Cincinnati to the State line of Indiana, where the Cincinnati and Indiana railroad crosses said line, which line of magnetic telegraph will pass through the county of Hamilton.

96 No. 7.—A line of magnetic telegraph to extend from Cincinnati to the State line of Indiana, where the Ohio and Mississippi railroad crosses said line, which line of magnetic telegraph will pass through the county of Hamilton.

No. 8.—A line of magnetic telegraph to extend from Cincinnati to the State line of Pennsylvania, where the Cleveland, Painesville and Ashtabula railroad crosses said line, which line of magnetic telegraph will pass through the counties of Hamilton, Butler, Warren, Montgomery, Greene, Champaign, Clermont, Clinton, Clark, Madison, Union, Franklin, Delaware, Morrow, Marion, Crawford, Richland, Huron, Ashland, Lorain, Cuyahoga, Lake, and Ashtabula.

No. 9.—A line of magnetic telegraph to extend from Cincinnati to the State line of Pennsylvania, where the Cleveland and Pittsburg railroad crosses said line, which line of magnetic telegraph will pass through the counties of Hamilton, Clinton, Clermont, Warren Fayette, Pickaway, Fairfield, Perry, Muskingum, Guernsey, Belmont, Jefferson, Columbiana, Greene, Madison, Franklin, and Licking.

No. 10.—A line of magnetic telegraph to extend from Cincinnati to Hillsborough, Marietta, and Belpre, which will pass through the counties of Hamilton, Clermont, Warren, Clinton, Highland, Ross, Vinton, Jackson, Athens, and Washington.

No. 11.—A line of magnetic telegraph to extend from the State

line of Indiana, at a point where the Dayton and Western railroad intersects said line, to a point at the State line of West Virginia, where the Steubenville and Indiana railroad intersects said line, which line of magnetic telegraph will pass through the counties of Preble, Montgomery, Greene, Clark, Madison, Franklin, Licking, Mus-
97 kingum, Coshocton, Tuscarawas, Harrison, Jefferson, Guernsey, and Belmont.

No. 12.—A line of magnetic telegraph to extend from Union, in the county of Darke, to Columbus, which will pass through the counties of Darke, Miami, Champaign, Union, Madison, Franklin, and Delaware.

No. 13.—A line of magnetic telegraph to extend from Union, in the county of Darke, to Cleveland, which will pass through the counties of Darke, Miami, Shelby, Logan, Hardin, Marion, Morrow, Crawford, Richland, Huron, Lorain and Cuyahoga.

No. 14.—A line of magnetic telegraph to extend from Union, in the county of Darke, to Dayton, which will pass through the counties of Darke, Preble, and Montgomery.

No. 15.—A line of magnetic telegraph to extend from the State line of Pennsylvania, where the Pittsburg, Fort Wayne and Chicago railroad crosses said line, to the State line of Indiana, where the said railroad crosses said Indiana State line, which line of magnetic telegraph will pass through the counties of Columbiana, Mahoning, Stark, Wayne, Holmes, Ashland, Richland, Crawford, Wyandotte, Hardin, Allen, and VanWert.

No. 16.—A line of magnetic telegraph to extend from Sandusky city to Zanesville, which will pass through the counties of Erie, Huron, Richland, Knox, Licking, and Muskingum.

No. 17.—A line of magnetic telegraph to extend from the State line of Pennsylvania, where the Atlantic and Great Western railroad crosses said line, to the State line of Michigan, where the Southern Michigan and Northern Indiana railroad crosses said line, which line of magnetic telegraph will pass through the counties of Trum-
98 ble, Geauga, Portage, Cuyahoga, Huron, Seneca, Summit, Lorain, Erie, Sandusky, Ottowa, Wood, and Lucas.

No. 18.—A line of magnetic telegraph to extend from Cleveland to the State line of Indiana, where the Michigan, Southern and Northern Indiana railroad crosses said line, which line of magnetic telegraph will pass through the counties of Cuyahoga, Lorain, Erie, Huron, Sandusky, Ottowa, Wood, Lucas, Fulton, Williams, and Defiance.

No. 19.—A line of magnetic telegraph to extend from Toledo to the State line of Indiana, where the Wabash Valley railroad crosses said line, which said line of magnetic telegraph will pass through the counties of Lucas, Wood, Fulton, Henry, Defiance, and Paulding.

No. 20.—A line of magnetic telegraph to extend from Cleveland to the State line of Pennsylvania, along the line and branches of the Cleveland and Pittsburg railroad, to a point where that railroad crosses said line, and to a point on the Ohio river at Bellaire, which line will pass through the counties of Cuyahoga, Summit, Portage,

Stark, Mahoning, Columbiana, Carroll, Jefferson, Belmont, Tuscarawas, Wayne, and Holmes.

No. 21.—A line of magnetic telegraph to extend from Cleveland to the State line of Pennsylvania, where the Cleveland and Mahoning railroad crosses said line, which line of magnetic telegraph will pass through the counties of Cuyahoga, Geauga, Portage, Trumbull, and Mahoning.

No. 22.—A line of magnetic telegraph to extend from Portsmouth to Columbus, which will pass through the counties of Scioto, Gallia, Jackson, Vinton, Ross, Pickaway, Franklin, Delaware, and Lawrence.

No. 23.—A line of magnetic telegraph to extend from Co-
99 lumbus to Delaware, which will pass through the counties of Franklin and Delaware.

Where either terminus of any of the foregoing lines is stated to extend "from" or "to" a town or city, it is intended to extend the lines into such town or city, to any point or points therein where it may be convenient to establish offices or branch offices, or to make connections with other lines.

Third. The amount of capital stock necessary to construct said lines of telegraph is five hundred thousand dollars, and the amount of each share is one hundred dollars.

Fourth. The time for holding the annual meeting of the company shall be on the first Monday of May.

In witness whereof, we have hereto set our hands and seals, this second day of December, 1864.

GEO. F. DAVIS. [SEAL.]
WILLIAM W. SCARBOROUGH. [SEAL.]
JOHN W. KIRK. [SEAL.]
I. HENRY FRENCH. [SEAL.]
SILAS C. NEWTON. [SEAL.]

[5-c. st'p]

STATE OF OHIO, *Hamilton county, ss:*

Be it remembered, that on the second day of December, 1864, before me, a justice of the peace in and for said county, personally came George F. Davis, William W. Scarborough, John W. Kirk, I. Henry French, and Silas C. Newton, the makers of the foregoing certificate, and acknowledged the signing and sealing thereof to be their voluntary act and deed.

In witness whereof, I have hereto subscribed my name and set my seal, at Cincinnati, the day and year above written.

[SEAL.] JOHN W. CARTER,
Justice of the Peace, Hamilton County, Ohio.

[5-c. st'p.]

STATE OF OHIO, *Hamilton:*

I, Benjamin J. Horton, clerk of the court of common pleas of said county, do hereby certify that John W. Carter, esq., whose name is signed to the foregoing certificate, was, at the time of signing the same, a legally acting justice of the peace within and for said

100 county, duly elected, commissioned, and qualified, and that his signature is genuine.

Witness my hand and the seal of said court, at Cincinnati, this 2nd day of December, 1864.

[SEAL.] B. J. HORTON, *Clerk*,
By EDW. P. CRANCH, *Deputy*.

[5-c. st'p.]

UNITED STATES OF AMERICA, *Ohio*,
Secretary of State's Office.

I, William Henry Smith, secretary of state of the State of Ohio, do hereby certify that the foregoing is a true copy of the original certificate of the United States Telegraph Company of Ohio, filed in this office December 3, 1864.

In testimony whereof, I have hereunto subscribed my name and affixed the great seal of the State of Ohio, at Columbus, the 13th day of February, A. D. 1865.

[L. S.] WM. HENRY SMITH,
Secretary of State.

[5-c. st'p.]

Agreement as to affidavits.

And afterwards, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, a certain agreement as to affidavits was filed herein, which is in the words and figures following; to wit:

Circuit court of United States.

THE WESTERN UNION TELEGRAPH COMPANY
against
THE UNITED STATES TELEGRAPH COMPANY.

It is agreed that the affidavits now on file may be read on the hearing as the depositions of the affiants properly taken, either party being at liberty to cross-examine the affiants at any time before the hearing, and to take the depositions of the affiants over again, as either party may desire, on due notice to the other party.

July 5th, 1865.

E. A. FERGUSON,
Att'y for Plaintiffs.
M. E. CURWEN,
Att'y for Resp.

Agreed statement of facts.

And afterwards, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, an agreed statement of facts in this case was filed herein, which
101 is in the words and figures following, to wit:

It is admitted that the original bill, which became the act of March 31, 1865, passed the senate of Ohio without amendment; that

it was referred to the judiciary committee of the house of representatives of Ohio before any amendments were made in the house; that Mr. Stanbery appeared before that committee on the 10th of March, 1865, on behalf of the complainants, and opposed the bill. He said, in substance, in his argument: "The proposed bill gives to telegraph companies the right to occupy the roadway of railroads and the right to pass and repass for construction and repair. This grant is without limit as to the number of lines to be constructed, or as to their positions, or as to the extent and nature of the right of passage for repair. The only limitation in favor of the railroad is, that they shall not interfere 'in any material degree with the practical uses belonging the railroad,' and the only other limitation is that a new line of telegraph shall not place its poles in such proximity to any other line of telegraph as 'to interfere, mechanically, with the practical working of such telegraph.' These provisions subject the railroads to occupations by telegraph lines without number and without limit. If only they leave unobstructed the actual traveled track, they may plant their posts, row after row, anywhere upon the roadway they see fit. Their lines, their posts, their fixtures, their stations, although all placed within the original breadth of land acquired and condemned for the exclusive and necessary use of the
102 road, are not all within or under the control of the managers of the road, either as to the place or manner of their construction, or their repair or their safety to the use of the road. Care should be taken that, in giving supposed aid to the public in one direction, the public convenience and safety be not endangered in another direction. Why is so great a breadth of land, beyond the space to be occupied by the rails, secured to a railroad? One essential object is the removal of every source of danger. Trees, however securely attached to the earth, are to be, or should be, removed wherever their fall might obstruct the track. Now it is perfectly well known that it is impossible to construct a line of telegraph within the road right of way, without, in some degree, incurring the danger of obstruction. A single line of posts, however judiciously located and carefully inspected, is a source of danger. Railroad men are well aware of it, and they therefore make all reasonable provisions to lessen the danger as much as possible. The occupation of their road by a telegraph line has been, heretofore, with their consent, and under their own control. They use the line, and their station-men examine its condition, and see that needful repairs are made. They designate the route for the erection of the posts. Any one can see that the whole subject should be exclusively under the road management, and it would be a fatal error to take from the road the complete supervision over it, and to surrender their roadway to the independent use, not only of an indefinite number of lines, but even of a single line of telegraph. What would be
103 the condition, as to safety, if a railway with, perhaps, a dozen independent lines of telegraph posts, located by telegraph corporations according to their own surveys and plans, and subject to no local supervision? We must not forget, that as soon as one of

these telegraph companies condemns the line, against the consent of the road, it has precisely the same right to its line of posts as the road has to its line of rails. The structure erected by the telegraph is peculiarly liable to decay and to prostration by winds. It requires constant attention, and yet the road menaced with danger has no power to forbid or avert it." The committee, after this argument, amended the bill by inserting the 3rd section. Morse's first patent expired in 1854, and his second patent, for the local circuit, in 1860; but the second patent was extended for a further term of seven years from its expiration. It is agreed that the complainants may amend the prayer of their bill by inserting the words written in the margin, and file, as evidence, a copy of the certificate of organization of the United States Telegraph Company of Ohio, and that they will correct the error in the record of the probate court attached to the bill, in respect to the dismissal of the complainant's petition in that court, which is accordingly done.

Nov. 3, 1865.

M. E. CURWEN,
Att'y for Def'ts.
E. A. FERGUSON,
Att'y for Complainant.

And afterwards, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, it being the October term of said court for the year last aforesaid, this cause having come on for hearing, and being argued by counsel, court ordered a decree to be entered, which is in the words and figures following, to wit:

104

Decree.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE UNITED STATES TELEGRAPH COMPANY of Ohio, *et al.*
} Chancery.

And now come, as well the said plaintiff as the defendant, the United States Telegraph Company of Ohio, and as to the said other defendant, the Cincinnati, Hamilton and Dayton Railroad Company, that defendant having failed to plead, answer, or demur to said bill, the same is, as to that defendant, taken as confessed; and, thereupon, this case is further heard by the court here. And having been fully argued by counsel of the said plaintiffs, and the said The United States Telegraph Company of Ohio, the court, after full consideration, do find the equity of the case with the said defendant, and do order and decree that the said bill be dismissed at the costs of said plaintiff. Thereupon the plaintiff, by its counsel, make application to the court here for the allowance of an appeal from said decree to the Supreme Court of the United States. And it being agreed by the parties, and so found by the court, that the matter in controversy in this case exceeds the value of $2,000, the said appeal is allowed by

the court here, and the plaintiff is directed to enter into an appeal bond in the penal sum of $500.

And afterwards, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-five, came the said complainants, by their counsel, and filed in the clerk's office of the court aforesaid, their appeal bond in the
105 words and figures following, to wit:

1st appeal bond.

Know all men by these presents, that we, I. H. Wade and Anson Stager, both of Cleveland, Cuyahoga county, in the State of Ohio, are firmly bound unto the United States Telegraph Company of Ohio, and the Cincinnati, Hamilton and Dayton Railroad Company, corporations duly established according to law, in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, they do hereby bind themselves, their successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed with our seals, this 20th day of November, A. D. 1865.

The condition of this obligation is such, that, whereas, heretofore, to wit, on the 12th day of May, A. D. 1865, the said, The Western Union Telegraph Company filed their bill of complaint in the circuit court of the United States for the southern district of Ohio, in chancery, sitting against the said The United States Telegraph Company of Ohio, and the said The Cincinnati, Hamilton and Dayton Railroad Company, being known as cause No. 258 (new series) in said court; and afterwards, to wit, at the October term of said court for the year 1865, the said cause was heard, and the said court dismissed the said bill of complaint, at the costs of said complainants, and the said complainants praying an appeal, an appeal was allowed upon the filing of a bond in the sum of $500. Now, therefore, if the said complainants shall, with all practicable speed, cause a
106 transcript of the record of said cause to be filed with the clerk of the Supreme Court of the United States, and shall diligently prosecute the said cause to a hearing in the said Supreme Court of the United States, and shall abide by all orders and decrees that shall be made and rendered by the said Supreme Court of the United States, and pay all costs and charges which may be ordered or decreed by said court to be by them paid, and shall save the said respondents harmless therefrom, then, and in that case, these presents shall be void, otherwise to be and remain in full force and virtue and effect.

Done at Cleveland, Ohio, the day and year first above written.

I. H. WADE, [SEAL.]
ANSON STAGER, [SEAL.]

Attest:
JAMES M. JONES.

The above bond approved, Nov. 22d, 1865.

H. H. LEAVITT, *Judge, &c.*

And afterwards, to wit, on the 22d day of January, A. D. 1867, came the complainants, by their counsel, and filed their petition for an allowance of appeal, in the words and figures following, to wit:

Petition for appeal.

To the honorable the judges of the circuit court of the United States, for the sixth circuit and southern district of Ohio:

Your petitioners, the Western Union Telegraph Company, a corporation created by the State of New York, and a citizen of that State, having its principal office in the same State, showeth, that your petitioners exhibited its bill in chancery in this court
107 against the United States Telegraph Company of Ohio, and the Cincinnati, Hamilton & Dayton Railroad Company, both of which companies are corporations created by the State of Ohio, and citizens thereof, each having its principal office at Cincinnati, in said southern district, to which bill the defendant, The United States Telegraph Company of Ohio, appeared and answered on the 9th day of June, A. D. 1865. But the said Cincinnati, Hamilton and Dayton Railroad Company, although duly summoned, failed to appear and plead thereto; that complainants having replied to the said answer, the said cause was at issue—and divers witnesses having been examined on both sides, the same came on to be heard before the honorable judges of said court on the 14th day of November, A. D. 1865, when the said judges were pleased to decree that said bill be dismissed at the costs of your petitioner, whereupon your petitioner made application to the court here for the allowance of an appeal from said decree to the Supreme Court of the United States, and it being argued by the parties, and so formed by the court, that the matter in controversy in this case exceeded the value of $2,000, the said appeal was allowed, and your petitioner directed to enter into an appeal bond in the penal sum of $500. That afterwards, on the 22d day of November, 1865, your petitioner
108 caused said appeal bond to be filed in the clerk's office of said court, the same having been duly approved by the Honorable H. H. Leavitt, one of the judges of this court. That the appeal, so allowed, has become void, because a copy of the record in said case was not returned to the next term of the Supreme Court of the United States, as required by law and the rules of said court. That your petitioner is advised that said decree is erroneous, and makes application to the court here for the allowance of an appeal therefrom, to the Supreme Court of the United States, and pray the same may be allowed and a citation issue to the defendant, returnable according to law.

H. STANBERY,
E. A. FERGUSON,
Solicitors for Compl'ts

Allowance of appeal.

And afterwards, to wit, on the 22d day of January, in the year of our Lord one thousand eight hundred and sixty-seven, the following entry was made upon the journal of said court:

This day, came the complainant, and filed its petition, praying the allowance of an appeal to the Supreme Court of the United States from the decree heretofore entered herein on the 14th day of November, A. D. 1865; and it having, heretofore, been found by the court, that the matter in controversy in this case exceeds the value of $2,000, it is ordered that said appeal be, and the same is hereby allowed by the court, and order complainant to give good and sufficient security to prosecute his said appeal to effect, and answer all damages and costs, if he fail to make his appeal good, in the sum of five
109 hundred dollars, and it is also ordered that a citation issue to the defendants, returnable according to law.

And afterwards, to wit, on the 20th day of April, A. D. 1867, came the complainant, and filed in the clerk's office of said court, an appeal bond in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, I. H. Wade and Anson Stager, both of Cleveland, Cuyahoga county, in the State of Ohio, are held and firmly bound unto the United States Telegraph Company of Ohio, and the Cincinnati, Hamilton & Dayton Railroad Company, corporations duly established according to law, in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed with our seals, this sixteenth day of April, A. D. 1867.

The condition of this obligation is such, that whereas, heretofore, to wit, on the twelfth day of May, A. D. 1865, the said The Western Union Telegraph Company filed their bill of complaint in the circuit court of the United States for the southern district of Ohio, in chancery, sitting against the said The United States Telegraph Company of Ohio, and the said The Cincinnati, Hamilton and Dayton Railroad Company, being known as cause No. 285 (new series) in said court, and afterwards, to wit, at the October term of said court for the year 1865, the said cause was heard, and the
110 said court dismissed the said bill of complaint, at the costs of complainants; and the said complainants praying an appeal, an appeal was allowed upon the filing of a bond in the sum of five hundred dollars; and that afterwards, to wit, on the twenty-second day of November, 1865, the said complainants caused said appeal bond to be filed in the clerk's office of said court, the same having been duly approved by the Honorable H. H. Leavitt, one of the judges of said court. That the appeal, so allowed, has become void, because a copy of the record in said cause was not returned at the next term of

the Supreme Court of the United States, as required by law and the rules of this court; and that afterwards, to wit, on the twenty-second day of January, 1867, an appeal was allowed by the said court, upon complainants executing an appeal bond in the sum of five hundred dollars. Now, therefore, if the said complainants shall, with all practicable speed, cause a transcript of the record of said cause to be filed with the clerk of the Supreme Court of the United States, and shall diligently prosecute the said cause to a hearing in the said Supreme Court of the United States, and shall abide by all orders and decrees that shall be made and rendered by the said Supreme Court of the United States, and pay all costs and charges which may be ordered or decreed by said court to be by them paid, and shall save the said respondents harmless therefrom, then, and in
111 that case, these presents shall be void, otherwise to be and remain in full force, virtue and effect.

(Signed) I. H. WADE, [SEAL.]
ANSON STAGER, [SEAL.]

The above bond approved, May 15, A. D. 1867.

H. H. LEAVITT,
U. S. Judge, Southern District of Ohio.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John McLean, clerk of the circuit court of the United States within and for the 6th judicial circuit, and southern district of Ohio, do hereby certify the foregoing transcript to be truly copied from the record, as the same is kept in this office.

Witness my hand and the seal of said court, this 17th day of May, A. D. 1867, and in the 91st year of the independence of the United States of America.

Attest:

JOHN McLEAN, *Clerk.* [SEAL.]

112 UNITED STATES OF AMERICA,
Supreme Court of the United States:

To the United States Telegraph Company of Ohio, and the Cincinnati, Hamilton & Dayton Railroad Company, greeting:

An appeal.

Whereas, The Western Union Telegraph Company of New York have obtained the allowance of our writ of error to the judges of the circuit court of the United States, within and for the southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in equity, wherein you, the said The United States Telegraph Company of Ohio, & the Cincinnati, Hamilton and Dayton Railroad Company, in that action lately recovered against

the said The Western Union Telegraph Company of New York, a decree and costs, as by the said record in the said circuit court of the United States for southern district of Ohio remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said The Western Union Telegraph Company of New York, we are informed, and our said appeal granted, issued, and allowed a aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be, you are, therefore, hereby commanded and cited, to be and appear before the Judges of the said Supreme Court, at the city of Washington at the next term of said Court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness, the Honorable S. P. Chase, Chief Justice of the United States of America, this 15th day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the 91st.

[SEAL.] H. H. LEAVITT,
One of the Judges of said Court.

113 CINCINNATI, OHIO, *May 16th*, 1867.

We acknowledge service by copy of the within writ.
THE CINCINNATI, HAMILTON &
DAYTON RAILROAD COMPANY.
By S. & S. R. MATTHEWS, *Att'ys.*

CINCINNATI, *May 17th*, 1867.

Served W. Y. Gholson, attorney of record for the United States Telegraph Company, personally, by copy of the within citation at 3 p. m. this day.

A. HICKENLOOPER, Jr.,
Marshal U. S. S. D. O.
By Y. H. MARPE, *Deputy*.

Fees:

2 services	$4 00
2 copies	1 00
2 miles	12
	$5 12